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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

Legislative

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA
WEDNESDAY, FEBRUARY 5, 1986
1:45 P.M.

DOCUMENTS DEPT.

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2 SENATE RULES COMMITTEE
3 STATE OF CALIFORNIA

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA
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16 WEDNESDAY, FEBRUARY 5, 1986

17 1:45 P.M.
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26 Reported by:

27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman
SENATOR WILLIAM CRAVEN, Vice-Chairman
SENATOR JOHN DOOLITTLE
SENATOR HENRY MELLO
SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

SENATOR ROBERT PRESLEY
JOSEPH A. ACETO, Member,
Board of Prison Terms
RALPH RAYMOND MORALES, Member,
Alcoholic Beverage Control Appeals Board
AURALEE STREET, Member,
Alcoholic Beverage Control Appeals Board
EDMUND Y. S. TONG, Member,
Board of Prison Terms
KENNETH W. KIZER, Director,
Department of Health Services

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Joseph Aceto, Member of the Board of Prison Terms.

MR. ACETO: Joseph A. Aceto, Member of the Board of Prison Terms.

CHAIRMAN ROBERTI: We'll ask you the same question we ask the Governor's Appointees in other cases, why you feel you are qualified?

MR. ACETO: I have three years of experience now. I've been before the panel three years ago, the same panel with the exception of Senator Doolittle. And I'm a little more qualified than I was then, sir.

CHAIRMAN ROBERTI: Are there any questions of Mr. Aceto? Senator Presley.

SENATOR PRESLEY: Mr. Chairman, I just wanted to say I've known Mr. Aceto for a number of years. He's been on the Board for three years and seems to be doing an excellent job. He has law enforcement background.

I would strongly support his confirmation.

CHAIRMAN ROBERTI: Thank you, Senator.

Any questions of Mr. Aceto?

SENATOR CRAVEN: Move Mr. Aceto's confirmation to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Aceto's confirmation be recommended to the Floor.

1 Let me just ask you a question. It's one we've all been
2 involved in to some extent, and that is the issue to alleviate
3 prison overcrowding is very severe.

4 Do you support any alternatives to incarceration?

5 MR. ACETO: Well, many years ago I did support a
6 committee project through the county jails. They could expand
7 the county jail systems with the state monies and apply that to
8 parole violators plus the population which could be housed in the
9 communities.

10 CHAIRMAN ROBERTI: Do you think that's still a viable
11 alternative?

12 MR. ACETO: I think it is now. You know, the jails are
13 crowded now, and they're all trying to fund themselves to build
14 larger complexes. And I think maybe the state could get some of
15 their monies involved in it.

16 CHAIRMAN ROBERTI: Very good.

17 Any other questions? Senator Petris.

18 SENATOR PETRIS: You were appointed originally in 1982
19 under Governor Jerry Brown?

20 MR. ACETO: Yes, sir.

21 SENATOR PETRIS: Since you've served under two
22 governors, I want to ask you what do you think the role of the
23 Governor should be, if any, in reviewing a decision made by your
24 agency? Let's say you decide to let somebody go, and there's a
25 big public flap, and the Governor gets a lot of heat. Should he
26 have authority to jump on you and tell you to reverse it?

27

28

1 MR. ACETO: Well, there's a bill out to that effect now.
2 I don't think it's been enforced yet, but with the process we
3 have on any parole that we grant, there is a 60-day review period
4 before it become final. Our office handles the process of
5 review. In the meantime, there's an appeal process for the
6 prisoner if we should deny him, and that is the other side of the
7 coin, in that there is also a 90-day appeal system after the 60
8 days. So, no parole grant or denial is effective for 60 days,
9 and we have an appeal process. If at that point it cannot be
10 resolved, perhaps the Governor's Office could look at it. But
11 that's the only response I have at this point.

12 SENATOR PETRIS: Well, the law you mentioned, the Nolan
13 bill, has only been in effect for a little more than a year. I
14 don't remember, does that spell out the circumstances under which
15 the Governor is empowered to do something, or is it just any time
16 he wants?

17 MR. ACETO: I doesn't spell it out, however there is a
18 process where I believe that the Governor's staff, certain staff,
19 is asking for certain files that are handled through grants.

20 The other bill, I think, involves -- Senator
21 Boatwright's bill, I think, is the one that allows the Governor
22 to review a grant.

23 SENATOR PETRIS: Have you had any requests from this
24 Governor --

25 MR. ACETO: Not as yet.

26 SENATOR PETRIS: -- to review since this bill went into
27 effect?
28

1 MR. ACETO: No.

2 SENATOR PETRIS: Have governors in the past asked for a
3 review whether there's a statute or not?

4 MR. ACETO: I haven't worked for any other governors.
5 My terms started on the 3rd of January, '83.

6 SENATOR PETRIS: You were appointed by the prior
7 Governor, but didn't serve under him?

8 MR. ACETO: That's correct.

9 SENATOR PETRIS: So, you haven't had any reviews at the
10 request of the Governor?

11 MR. ACETO: Not to my knowledge.

12 SENATOR PETRIS: The last question is: How much weight
13 do you think should be given to public outcry that expresses
14 disagreement with the Board action?

15 MR. ACETO: In the whole scope of things, I believe it's
16 probably the lower half of the priorities. You've got commitment
17 offense, your prior record, your prior history, the institutional
18 adjustment. In that order, that's about the way things work out,
19 and resources for parole is the last item. So, beyond that would
20 be probably public outcry.

21 SENATOR PETRIS: Thank you.

22 MR. ACETO: And of course, the safety of the public on
23 top of it.

24 SENATOR PETRIS: Is that a fixed term or at will? Can
25 you be fired by the Governor, or do you have a fixed term?

26 MR. ACETO: I have a fixed term. I believe that there
27 are provisions for, if you, if there's some malpractice or
28 something.

1 SENATOR PETRIS: So if a particular Governor disagreed
2 with the Board and just wanted to fire them, he couldn't do it.

3 CHAIRMAN ROBERTI: It would have to be misfeasance.

4 SENATOR PETRIS: Well, it might be interpreted that way.
5 Thank you.

6 CHAIRMAN ROBERTI: Any further questions?

7 Senator Craven moves that Mr. Aceto be recommended to
8 the Floor for confirmation.

9 Any opposition?

10 Seeing none, the Secretary will call the roll.

11 SECRETARY WEBB: Senator Doolittle.

12 SENATOR DOOLITTLE: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY WEBB: Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 The vote is five to nothing; confirmation is recommended
22 to the Floor.

23 Congratulations.

24 MR. ACETO: Thank you, Chairman and the Committee.

25 CHAIRMAN ROBERTI: We look forward to continuing to work
26 with you.

1 Mr. Ralph Morales, Member of the Alcoholic Beverage
2 Control Appeals Board.

3 MR. MORALES: My name is Ralph Morales.

4 CHAIRMAN ROBERTI: Mr. Morales, we'll ask you the same
5 question: Why you feel you're qualified to assume this position?

6 MR. MORALES: On the basis of 20 years law enforcement
7 experience with the Los Angeles Police Department. Also I've had
8 six years of experience with the Narcotics Prevention Project in
9 East Los Angeles. And ever since I retired from the police
10 department in 1968, I've been involved in security. I'm
11 presently working at Walt Disney Pictures in Burbank.

12 CHAIRMAN ROBERTI: Any questions of Mr. Morales?

13 Is there any opposition to Mr. Morales' appointment?

14 SENATOR CRAVEN: Move Mr. Morales.

15 CHAIRMAN ROBERTI: Senator Craven moves Mr. Morales'
16 appointment be recommended to the Floor for confirmation.

17 Secretary will call the roll.

18 SECRETARY WEBB: Senator Doolittle.

19 SENATOR DOOLITTLE: Aye.

20 SECRETARY WEBB: Senator Mello.

21 SENATOR MELLO: Aye.

22 SECRETARY WEBB: Senator Petris.

23 SENATOR PETRIS: Aye.

24 SECRETARY WEBB: Senator Craven.

25 SENATOR CRAVEN: Aye.

26 SECRETARY WEBB: Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.
28

1 The vote is five to nothing; confirmation is
2 recommended.

3 Congratulations.

4 MR. MORALES: Thank you, gentlemen.

5 CHAIRMAN ROBERTI: Auralee Street, Member of the
6 Alcoholic Beverage Control Appeals Board.

7 MS. STREET: Good afternoon, Mr. Chairman. I'm Auralee
8 Street.

9 CHAIRMAN ROBERTI: We'll ask you the same question: Why
10 you feel you're qualified to assume this position?

11 MS. STREET: I've had many years experience as far as
12 governmental agencies are concerned. I've been on the Santa
13 Clara City Council for eight years; was a planning commissioner
14 for a few years before that. I've also served in governmental
15 councils and other agencies.

16 CHAIRMAN ROBERTI: Are there any questions of Ms.
17 Street? Senator Mello.

18 SENATOR MELLO: As I recall, this position is not
19 salaried; is that correct? What does it pay, a per diem?

20 MS. STREET: Yes, it's a per diem of 100 dollars.

21 SENATOR MELLO: It's \$100 a meeting. At one time it was
22 a salaried position.

23 Do you think it should be salaried like a full-time
24 employee would be, or should it continue as a part-time?

25 MS. STREET: I know that is being, I think, debated at
26 the present time. It would naturally be nice to have a salary.
27 I do work very hard with the Commission, and I know the other
28 Commissioners do also, Senator Mello.

1 SENATOR MELLO: So you think it should be returned to
2 the range where you had it before, paying a full salary?

3 MS. STREET: Yes, that'd fine.

4 SENATOR MELLO: What are some of the problems that we
5 have out there? I'm not really too familiar, other than what my
6 friend Warren Dorn tells me once in a while. What are the
7 typical problems that your Board gets involved in administering?

8 MS. STREET: Well, the thing that was kind of a surprise
9 to me was the tremendous amount of drug abuse, and the
10 terminations of licenses because of this type of illegal
11 activity.

12 As you know, I've only served on the Board since around
13 April, and that was a surprise to me. It's been a different kind
14 of area for me to serve in, coming from a council, you know,
15 where this is an appeals situation that's so structured.

16 SENATOR MELLO: Did you say illegal drugs?

17 MS. STREET: The illegal use of drugs as far as, you
18 know, in bars, with people selling drugs, bartenders, waitresses,
19 things like that, where people then -- licenses are terminated
20 because of that activity.

21 SENATOR MELLO: How widespread is that do you think?

22 MS. STREET: It seems to be, you know, there's a lot of
23 cases. We certainly handle a lot of those cases.

24 SENATOR MELLO: What's the solution for trying to
25 enforce that kind of activity?

26 MS. STREET: I wish I knew that, Senator Mello, as far
27 as the drug activity in this state and this country is concerned.
28

1 I really don't have the answer to that, but I think that strict
2 law enforcement is certainly necessary.

3 SENATOR MELLO: Do you think we ought to take their
4 license away if they get caught selling drugs?

5 MS. STREET: Yes, I do think that it's a privilege to
6 have those licenses, and I think any illegal activity should be
7 punished.

8 SENATOR MELLO: Thank you.

9 MS. STREET: Thank you, sir.

10 CHAIRMAN ROBERTI: Any further questions? Is there any
11 opposition to the appointment?

12 SENATOR CRAVEN: Move Ms. Street.

13 CHAIRMAN ROBERTI: Senator Craven moves Ms. Street's
14 confirmation be recommended to the Floor.

15 Secretary will call the roll.

16 SECRETARY WEBB: Senator Doolittle. Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Senator Craven.

21 SENATOR CRAVEN: Aye.

22 SECRETARY WEBB: Senator Roberti.

23 CHAIRMAN ROBERTI: Aye.

24 The vote is four to nothing; confirmation is recommended
25 to the Floor.

26 Congratulations.

27 MS. STREET: Thank you, gentlemen.
28

1 CHAIRMAN ROBERTI: Edmund Y. S. Tong, Member of the
2 Board of Prison Terms.

3 Mr. Tong, we'll ask you the same question: Why you feel
4 you're qualified to maintain this position? It's a
5 reappointment.

6 MR. TONG: I think I've done a good job in the position.
7 In another month I'll have served on the Board for five years.
8 And I've had training in the area of social problems at the
9 academic level, and I think that's been of help. The training
10 and schooling has been at the graduate level.

11 CHAIRMAN ROBERTI: Are there any further questions or
12 debate? Senator Mello.

13 SENATOR MELLO: I'd like to just make a comment.

14 I think that Mr. Tong, having been appointed by the
15 former Governor, Jerry Brown, and I think reappointed now by
16 Governor Deukmejian, speaks well for his record and his ability.

17 I had a chance to speak with him at some length, and I
18 was really impressed with the understanding that he related to me
19 in what his very difficult job is, and under some very trying
20 conditions. I just want to commend him for the outstanding job
21 he's doing.

22 CHAIRMAN ROBERTI: You and Mr. Aceto are two of the
23 rarities around here, reappointments from the last administration
24 to the present one. It does not happen too often.

25 Any further question of Mr. Tong?

26 SENATOR CRAVEN: Move Mr. Tong.
27
28

1 CHAIRMAN ROBERTI: Senator Craven moves Mr. Tong's
2 confirmation be recommended to the Floor.

3 Any opposition?

4 Seeing none, the Secretary will call the roll.

5 SECRETARY WEBB: Senator Doolittle. Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is four to nothing; confirmation's recommended
14 to the Floor.

15 Congratulations.

16 MR. TONG: Thank you very much.

17 CHAIRMAN ROBERTI: Kenneth Kizer, Director of the
18 Department of Health Services.

19 Dr. Kizer, we'll ask you the same question: Why you
20 feel you're qualified to assume this position?

21 DR. KIZER: Thank you, Senator.

22 As you know, this is the third position I have held in
23 the past two years. I think I bring an appropriate
24 administrative skill to the job. I'd also note that I think I
25 bring certain sensitivities on health issues to the job that may
26 not have been present for sometime. I think that that will be
27 beneficial to the Department, the combination of the
28 administrative skills and the particular health sensitivities.

1 CHAIRMAN ROBERTI: Are there any questions of Dr. Kizer?
2 Senator Mello.

3 SENATOR MELLO: I have some questions.

4 I know some people here might be testifying on some of
5 the same subjects here. Maybe I'll just try to make mine fairly
6 brief.

7 Some of the concerns I have are in the slowness of
8 implementing some of the legislative requirements of the past.
9 This pertains to preadmission screening for placement of senior
10 citizens into nursing homes.

11 From what I'm able to learn about the program, which
12 required seven offices, it would be implemented by July, 1981,
13 and then it would be statewide in July of 1986.

14 From our conversation and from our own evaluation, it
15 doesn't appear that we're moving very quickly in that direction,
16 which I think is going to be the solution to a lot of the
17 misplacement of senior citizens into nursing homes, is to do a
18 better job of screening them.

19 Why is there a delay, and what can we expect for
20 statewide implementation? What timetables?

21 DR. KIZER: As you know from our previous discussions, I
22 do view preadmission screening as something that has some value.
23 There remains some controversy in the literature and the data
24 supporting this as exactly how much advantage that will have.
25 But that is something that only time will tell.

26 With regard to your specific questions on when it will
27 be implemented, I think there are probably three reasons why it
28 has not been implemented as quickly as we would all like to see.

1 One of those, and perhaps the key, has been the lack of
2 access to the Medicare records. The current statutory authority
3 does not give us appropriate authority to get into the Medicare
4 records, and as you well know, probably 90-95 percent of the
5 admissions to nursing homes are in that category.

6 Secondly, it also has to do with the fact that the
7 program has been voluntary to date, and that there is not a
8 mandate for either general acute care hospitals or for long term
9 care facilities to participate in this.

10 Lastly is the question as to who is going to do the
11 preadmission screening, whether that is something that could fall
12 within the umbrella of existing -- or the framework that
13 currently exists within the Medi-Cal system, or does that have to
14 be subcontracted out, and questions of that nature.

15 Now, the solution I would propose to that is that those
16 three problems be addressed via legislation. And I'm happy to
17 say that we have pushed, and we do have a legislative proposal
18 specifically to address those three problems that we see in
19 implementing a preadmission screening, and that we would like to
20 see this pursued as an urgency measure such that hopefully we
21 will be in a position to if not meet, at least certainly come
22 close to the July 1, 1986 time as far as implementation on a
23 statewide basis.

24 SENATOR MELLO: Just going over your responses, you mean
25 to say we're unable to get Medicare records from the federal
26 government when you have Ronald Reagan in the White House and
27 Governor Deukmejian out here in this very close relationship?
28

1 DR. KIZER: We currently do not have the authority to
2 get into these records. As you know, many of these people, the
3 majority, obviously, become Medi-Cal patients at some time, but
4 it's not at a time necessarily of their admission to a nursing
5 home; indeed, it's probably on the average something like three
6 weeks after they're admitted to a nursing home. Then they would
7 switch from a Medicare to a Medi-Cal basis.

8 Currently the authority does not exist for us to get
9 into those records, to get into those records in the hospital,
10 the clinical records, to indeed do the sort of assessment and
11 screening that would be necessary to fulfill the legislative
12 intent there. So, it's that sort of authority that we're seeking
13 in legislation.

14 SENATOR MELLO: It would appear to me, if screening as
15 it's worked in other states is going to save money and also place
16 people more properly in the proper level of care, I can't
17 understand what the resistance might be from any level of
18 government of making those records available.

19 That certainly should be pursued.

20 You indicated that the preadmission screening program
21 now is voluntary?

22 DR. KIZER: That is correct, that on a statewide basis,
23 both long-term care facilities and general acute care hospitals
24 are not under a requirement to participate in that program.

25 SENATOR MELLO: Doesn't Mr. Felando's bill, AB 2226,
26 call for this mandatory screening by July 1 of 1986?

1 DR. KIZER: It's my understanding that that bill is a
2 voluntary effort. There are private programs that were a part of
3 that bill, but on a statewide basis it's a voluntary effort on
4 the part of those institutions.

5 SENATOR MELLO: Another area of great concern is the
6 incident that happened up in Oroville at the nursing home where
7 there was some 39 deaths that occurred within a period of three
8 or four months. And there seemed to be, from information and an
9 interview I had with the Attorney General's Office, a lack of
10 cooperation from your Department in giving to the Attorney
11 General's Office, which I understand now this situation is now
12 under a criminal investigation which may lead to indictments and
13 further activity.

14 Is there a reason why your staff does not cooperate
15 fully with the Attorney General's Office?

16 DR. KIZER: No, there's no reason why they shouldn't.
17 Indeed, my instruction, as I've indicated to you in a previous
18 conversation, is that the Department will cooperate to the
19 fullest extend possible with anybody who's doing any sort of
20 investigation.

21 Now, with regard to the specific incident there, there
22 remains, I suppose, some uncertainty as to what is the
23 uncooperation that you refer to. The only incident that I can
24 find out from discussions with my staff where there might even be
25 considered a hint of that was an incident where the Attorney
26 General requested certain comments to be released in a press
27 statement from a confidential report that they were provided, and
28

1 that the person who had provided those comments felt that it
2 would be inappropriate for that confidential material to be given
3 to the press at that time.

4 Otherwise, I have been unable to determine where or on
5 what basis this allegation has been made. I certainly would
6 welcome the opportunity to speak with the Attorney General on the
7 matter.

8 SENATOR MELLO: Well, as you recall, I gave you the
9 names of the two investigators. They were indicating to me, at
10 least, that they were not able -- part of their own investigative
11 work, they were trying to investigate so that their case could be
12 processed, but they were unable to get that cooperation. I just
13 hope that you do follow through because what seems unreal to me
14 is that some high number of deaths, some 39 deaths, out of a
15 total number of beds there of 60 or 70, that occurred within a
16 very short period of time, just seems unreal that that would
17 happen from natural causes.

18 I think all of us, society, deserve an answer to all
19 that so that we can prevent it from happening again. If there
20 are criminal charges to be filed, then certainly all levels of
21 government should work together and cooperate, I think.

22 DR. KIZER: I certainly agree with you.

23 I would like to add just two points to your comment
24 there.

25 As I'm sure you're familiar, in three other nursing
26 homes in that area, there was also an increase in deaths there as
27 well as at a community college there was an increase in the
28

1 incidence of flu, and that my medical consultants, several of
2 them, all feel quite confident that the increase in deaths there,
3 as is well recognized throughout the nation, that nursing homes
4 are a setting in which you do see outbreaks or increased
5 incidence of deaths due to flu outbreaks, and their thinking is
6 that this was due to flu.

7 Now, given that there is an investigation going on, I
8 suppose I need to be somewhat circumspect about what I say, but I
9 would like to add that I think one of the areas that this
10 indicates a need for the Department, indeed for other state
11 agencies involved here, is to look more at outcome variables as
12 far as their certification inspections, and this is something
13 which we are currently looking at now. Indeed, we can start
14 looking at more outcome variables as measures of quality of care
15 in addition to the process variables.

16 As you're well aware, we have in the past several months
17 considerably intensified our efforts in the enforcement area, but
18 I think the next step for us to go is to start looking at those
19 various outcome measurements that will give us, perhaps, a better
20 index of quality of care in addition to whether they are meeting
21 the various regulatory requirements of both the state and federal
22 control agencies.

23 SENATOR MELLO: We also had a chance to briefly discuss
24 this Monterey County Health Initiative. That's been a system
25 that started up, and then it was forced to close down because of
26 inadequate funds. Now the providers there have some \$3.4
27 million, I think, of claims against the collapsed system.

1 My understanding is you support, and you've been
2 recommending to the Governor, that we compromise and settle these
3 claims.

4 Would you mind just going through that briefly for me
5 again, what your position is on it?

6 DR. KIZER: You are correct. I have recommended to the
7 Governor, and the Governor has indicated his support for this
8 position as well, that we would support a legislative measure
9 that would appropriate up to \$3.4 million for that effort as long
10 as that was consistent with the law and addressed a variety of
11 concerns that have been expressed as far as the legality of such
12 a measure.

13 SENATOR MELLO: Thank you.

14 No further questions, Mr. Chairman.

15 SENATOR CRAVEN: Senator Petris.

16 SENATOR PETRIS: Thank you.

17 I have a couple of areas, continuing our talks that we
18 had before.

19 Aldicarb. I understand in a very recent memo that
20 you've recommended to Director Berryhill of Food and Ag that it
21 be reevaluated. I want to read some extracts, but before getting
22 to that, on a more general thing, how do you see your role as
23 head of this agency in dealing with toxics and pesticides that
24 are normally identified with agricultural use? What should the
25 role of the Health Services Department be?

26 DR. KIZER: I think as currently mandated or as stated
27 in the statute, our role is a support role in that we do
28

1 evaluations of various kinds on what public health concerns would
2 be related to those pesticides; that the Department of Food and
3 Agriculture does have the risk management responsibility for
4 controlling the use of those pesticides that are used in
5 California.

6 I suppose if you were to use a military model, we have a
7 staff function and they have the line function.

8 SENATOR PETRIS: Probably a good analogy here.

9 In other words, you don't have authority if a major
10 problem comes to your attention, such as the watermelon thing,
11 and Agriculture shows some kind of reluctance to really move on
12 it and get something done, you have no authority to go in on your
13 own under that situation, do you?

14 DR. KIZER: I'm not sure that the -- since you chose the
15 watermelon incident, I think that was a good example where we
16 indeed did have the authority and moved very quickly within
17 literally a matter of hours to indeed take actions that did
18 protect the public health and that were commensurate with what we
19 perceived to be the risk at the time.

20 SENATOR PETRIS: And what was the role of the Department
21 of Agriculture?

22 DR. KIZER: They had --

23 SENATOR PETRIS: Did they invite you in?

24 DR. KIZER: Well, I think everyone perceived that as a
25 problem that needed action. We addressed it from the public
26 health perspective, issued a remove from sale order, an embargo,
27 and a number of other measures which you're familiar with. Food
28

1 and Agriculture had the line function of going out, looking at
2 the fields and doing some of the testing, and some of the other
3 measures dealing with the product getting into the channels of
4 trade.

5 SENATOR PETRIS: Now, is that the common pattern, where
6 you move quickly, let's say even ahead of Ag, or are you normally
7 required to wait until they make a determination and invite you
8 in?

9 In other words, isn't the staff function that you
10 mentioned more an advisory capacity rather than a line duty?

11 DR. KIZER: I think that the role that the Health
12 Department assumes is going to be situational specific, and that
13 depending on the specific circumstances that may be attendant to
14 any event, that we may move more quickly or more slowly,
15 depending on what we perceive as the needs to protect the public
16 health.

17 SENATOR PETRIS: Suppose as a result of that watermelon
18 incident you discovered that there were other incidents that led
19 you to believe that this should be banned.

20 Would you ban it, or would you just have to recommend
21 that Agriculture ban it?

22 DR. KIZER: It's my understanding of current statute, as
23 far as banning, that that would be a function of the Department
24 of Food and Agriculture.

25 SENATOR PETRIS: That's the way the statute is?

26 DR. KIZER: That's my understanding of it.

27
28

1 SENATOR PETRIS: Is that the most desirable statute?
2 Maybe we can change it.

3 DR. KIZER: Well, I think that that's a question that
4 you in the Legislature have to address, that our function is to
5 perform -- carry out the will of the Legislature and to take
6 actions, administrative actions, as necessary to protect the
7 public health.

8 Really the question that you're addressing is a
9 fundamental state question that has to do with both organization
10 and policy, and it's the sort of thing that I'm sure would be
11 best addressed through the Legislature.

12 SENATOR PETRIS: Well, suppose I were to call you as a
13 witness for one of my bills that says we should have the doctors
14 make these decisions, not the farmers. What would your feeling
15 be on that?

16 I'm not trying to put you on the spot.

17 DR. KIZER: You're not?

18 (Laughter.)

19 SENATOR PETRIS: I know there's some problems there, but
20 I've often asked administrators, you know, how they would like to
21 see the world rather than how it is. We know how it is; can we
22 improve it.

23 You're a doctor. You're the first doctor to head this
24 agency since Latner. And I'm impressed by the fact that you had
25 this excellent training in public health. You have an M.D. It
26 seems to me you look at the world through the doctor's eyes. The
27 grower doesn't necessarily look at it that way.

28

1 The Department is grower-dominated rather
2 doctor-dominated by the nature of things. It's not a criticism;
3 it's just an observation.

4 Shouldn't the Health Department, under a Health Services
5 agency, under a doctor, have as a matter of policy, authority to
6 move in areas where the medical opinion is that the health of the
7 public needs to be protected, and if that means issuing an order
8 banning some dangerous product that should be included? Isn't
9 that a logical way to go?

10 DR. KIZER: Let me just preface that by saying that
11 indeed I have been accused by certain growers of looking at the
12 world through doctor eyes as opposed to grower eyes. That's a
13 criticism which I welcome.

14 The question that you ask really becomes a form versus
15 function question, and I think that the key role is that there
16 should be medical and public health input into whatever is used
17 in the way of pesticides in California, and that that could be
18 done in a variety of ways, and that there are certainly other
19 components, the non-health related components, that have to be
20 looked at. And when you get into the actual management of the
21 use of these pesticides, that that could be done, and indeed it
22 is done in this state, by the Department of Food and Agriculture,
23 and there are a number of reasons for that.

24 SENATOR PETRIS: I understand that, but over the years
25 under several administrations I've encountered a certain pattern,
26 and that is that the medical opinion, which is often supported by
27 outside medical opinion, reinforced, is subordinated to the
28

1 grower outlook time and time again. Enforcement programs are
2 slowed down; they're diluted; they're weakened because the
3 prevailing view in Agriculture is not the medical view, not the
4 public health view. That's a natural outcome of the friction and
5 competition.

6 The reason I ask you is that I have long advocated a
7 greater authority and voice on the part of the medical view
8 point, particularly where there is a conflict, an honest
9 difference. You could have some experts in Agriculture who are
10 honestly convinced that a certain hazardous pesticide isn't so
11 hazardous that it should be banned. But if the weight of medical
12 opinion is that it should, it seems to me that that should
13 prevail over all those other considerations.

14 I won't ask you for an answer to that. I'm just telling
15 you why I'm asking.

16 Now, let me go into some comments on aldicarb, because I
17 think it kind of is an illustration of this point.

18 In your memo to Mr. Berryhill, there's statements as
19 follows. First of all, you recommend that it be reevaluated;
20 there be a reevaluation of it. That's one of the forms that the
21 inquiry can take.

22 Now in the substance, in the body, it says:

23 "Poisonings from aldicarb-contaminated
24 California watermelons in July 1985 con-
25 stituted the largest foodborne pesticide
26 outbreak in North American history."

27

28

1 Well, maybe there hasn't been any prior outbreak, so that may
2 sound more dramatic than it seems, but that seems to me to be a
3 rather alarming state of facts.

4 You went on to say:

5 "Nearly a thousand probable cases
6 were reported from California, the
7 Pacific Northwest, Canada and
8 Alaska."

9 Let me just hold that. That's point one.

10 The next one is:

11 "The primary concern is that aldicarb
12 seems to be capable of causing severe
13 poisoning at very small concentrations
14 ... at levels that might be found with
15 contaminated produce. Few registered
16 pesticides have this potential."

17 The next point is:

18 "Aldicarb contamination of groundwater
19 has been reported from 13 states, in-
20 cluding Del Norte County in California."

21 I don't know whether that means that's the only county in our
22 state that has reported or not.

23 DR. KIZER: That's what it means.

24 SENATOR PETRIS: The final point is:

25 "Aldicarb is the most acutely toxic
26 pesticide registered in the United
27 States. Severe and potentially lethal
28

1 levels of contamination can result
2 from misapplication to certain crops
3 as seen from several foodborne episodes
4 of aldicarb."

5 So, there's more than the watermelon, apparently, of aldicarb
6 poisoning.

7 Now, given those statements, I know they're pulled out
8 of context and you have a discussion, I wonder what it takes to
9 get your Department to recommend a ban rather than a
10 reevaluation?

11 It seems to me any reading of these statements and the
12 memo as a whole would lead just about anybody to come to the
13 conclusion that this is a very dangerous thing. It's the most
14 toxic registered in the whole country. And the recommendation
15 ought to be stronger than a mere reevaluation, unless there's
16 some holes in the analysis?

17 DR. KIZER: I think, as you yourself noted, that you
18 have extracted a few quotes from there, and there are a number of
19 points that you did not quote from that I think are relevant to
20 the consideration and the recommendation that was put forward.
21 Among these are the fact that aldicarb -- if aldicarb is not
22 used, then other pesticides would be used in greater quantity and
23 greater frequency to achieve the same degree of pest eradication.

24 I think that one of the considerations that we always
25 have to keep in mind is what is the total burden of pesticide
26 that will be used, so that is one thing.

1 Another word that you did read but I think needs to be
2 emphasized is misapplication. As you're aware, since the
3 incident last summer, the Department of Food and Agriculture has
4 intensified their efforts substantially. I don't have the exact
5 figures here, but I understand they have taken on, or are in the
6 process of taking on, over 40 additional staff. Their budget has
7 been augmented by several million dollars to intensify their
8 enforcement activities. Further, the Legislature has given them
9 increasing statutory authority to deal with problems.

10 I think that the recommendation also has to be viewed in
11 the context of when they have historically gone back and put
12 products in reevaluation, about a third of the time they've come
13 to the conclusion that they're either withdrawn or their use is
14 cancelled in California.

15 So, I think that at this time this is an appropriate
16 recommendation. I have received very strong, and I would
17 emphasize very strong, assurances by Mr. Berryhill, by Mr. Van
18 Ness, by a number of other key members of the Department of Food
19 and Agriculture, that the conditions that may have precipitated
20 or preceded the incident last summer will not occur again, that
21 their enforcement activities are greatly heightened, that the
22 whole attitude that currently exists is different than it was
23 then.

24 So at this time I think it's an appropriate
25 recommendation. Clearly I would view another incident -- another
26 significant incident of poisoning would certainly require us to
27 reconsider that recommendation, and indeed, perhaps, to recommend
28 a much stronger action at that point.

1 SENATOR PETRIS: Well, that one-third is impressive.
2 It's also frightening, but it also means that chances are two to
3 one that it won't be banned, looking at the historic experience.

4 We talked about pesticides, and my bill of last year,
5 950, which was intended to help us fill the data gaps. You're
6 familiar with that report on the data gaps in the things we were
7 looking at that cause birth defects? A recent report of the
8 Department of Agriculture on it that's required by SB 950?

9 Are you familiar with that report?

10 DR. KIZER: Well, I'm aware that a report was
11 promulgated. I must confess that I have not had the time since
12 that was put out to read it in detail or really to gain other
13 than passing familiarity with it.

14 SENATOR PETRIS: Let me just tell you in summary,
15 there's even more holes than we thought. I don't remember now
16 the figure. It looked like 97 percent of either the pesticides
17 or the ingredients being used have no information on file about
18 them. It's just staggering.

19 My question is, given that -- or let's take half. Let's
20 say it's only 46 percent, 44 percent. What will the role of your
21 Department be in seeing to it that these gaps are filled as
22 quickly as possible, and encourage the Department to do what
23 needs to be done? Will you be playing any role in that, or do
24 you just wait for Agriculture to do what it has to do?

25 DR. KIZER: Obviously we will cooperate with the
26 Department of Food and Agriculture and provide them what ever
27 support we're able to in this regard. It's my understanding that
28

1 those data gaps will be filled from a variety of sources, and
2 that they, obviously, are putting -- that they are going to be
3 working with the academic community and the industry to fill
4 those data gaps.

5 I think that at this point I'm not exactly sure what
6 role we will be assuming, but obviously we will support their
7 efforts in whatever way we can.

8 SENATOR PETRIS: Do they have a separate medical team
9 over there?

10 DR. KIZER: They do have medical input and expertise
11 that they utilize as well.

12 SENATOR PETRIS: Are they permanent staff, or are they
13 consultants from the outside?

14 DR. KIZER: It's my understanding that they indeed do
15 have some medical staff. I really can't tell you how many or
16 what their particular professional qualifications are.

17 SENATOR PETRIS: Do you send your medical people in to
18 do a spot check of the reports to see how they're coming along,
19 to see if you can be of assistance?

20 DR. KIZER: I'm not sure that we specifically do that.
21 We do have frequent communication with them on a staff level, and
22 that my staff, Dr. Jackson and many others in the epidemiologic
23 studies section and other sections of the Department, do have
24 frequent contact with them. I'm not sure that it is quite in the
25 guise that you have laid out, though.

26 SENATOR PETRIS: On your recommendation for
27 reevaluation, can you tell us a little bit about the process that
28

1 your people went through to arrive at that? Do you have working
2 papers available that can be checked to see how bad the problem
3 is, or is it a spot check? How does that come about?

4 DR. KIZER: I'm not sure I understand your question.

5 SENATOR PETRIS: Well, on the aldicarb, your
6 recommendation for reevaluation, how did your people arrive at
7 that? Was it the one dramatic episode; was it a series of
8 things; and what kind of studies did they do to reach this
9 conclusion?

10 DR. KIZER: Well, I think the usual process, for
11 example, here is that there clearly was a rather dramatic
12 incident last summer involving watermelons that precipitated a
13 more focused look at this question. That was put in the context
14 of the historical concerns, or historical incidence. The
15 literature was reviewed, and as you can see on that memo, there
16 is a page of references and literature that was reviewed and
17 looked at. And then there, of course, is internal discussions on
18 this, and a recommendation comes out of that.

19 SENATOR PETRIS: Are your staff papers filed somewhere
20 for future reference?

21 DR. KIZER: Anything that is listed there is, of course,
22 a public record, and most of those items are in the scientific,
23 medical or scientific, literature, and they're available at any
24 library that keeps those journals.

25 SENATOR PETRIS: If I knew how to read them, could I
26 read your reports?

27 DR. KIZER: I'm sure you could read them.
28

1 SENATOR PETRIS: Now let me go over to another phase of
2 your enormous responsibilities, county hospitals.

3 When I first came up here a hundred years ago, the poor
4 were sent to the county hospital for medical care, and everybody
5 else went elsewhere. Now we're right back where we started
6 before I got here.

7 The hospitals, even those who have Medicare contracts,
8 are announcing that they're going to give them up. Others who
9 take people on an emergency basis, stabilize them and then dump
10 them into the county hospitals. County hospitals don't have the
11 staff or the money to take care of everybody. Mine doesn't in my
12 county.

13 My first question is, what's going to happen to the
14 county hospitals in this kind of situation? What do you see?
15 What's their future?

16 DR. KIZER: I think there is a future. This is a
17 question which we have tried to address internally. We have met
18 with the various constituent groups on this issue.

19 I foresee a role in California in the indefinite future
20 for county hospitals. I think that the function they serve is
21 one that cannot be supplanted by other measures, at least in part
22 of the areas.

23 One of the questions that has to be addressed is that in
24 at least some parts of the state where county hospitals still
25 exist, could that need that they fill be addressed by other
26 facilities? That's something which we're working with the Public
27 Hospital Association and other groups to deal with.

1 SENATOR PETRIS: What are the other options? I thought
2 there weren't any left.

3 DR. KIZER: I'm not sure that's true. One of the
4 options would be contracting with private hospitals to provide
5 that care. As you're probably aware, one of the issues in the
6 county hospital question, which I might just sidetrack for a
7 moment --

8 SENATOR PETRIS: Excuse me. The reason they're dumping
9 is that they're not being paid for what they're doing. We're
10 talking about private hospitals who take people in on an
11 emergency basis. They're assigned, you know; certain hospitals
12 are emergency hospitals that take them in, can't get any pay for
13 it, stabilize them, dump them.

14 So, if we had the money for contract, why aren't we
15 paying the present providers?

16 DR. KIZER: I'm not sure it's quite as simple as you've
17 outlined, but as I was saying, the question here is one of the
18 major problems, and indeed I have gone out to quite a number of
19 county hospitals and made personal visits to many of them.

20 One of the themes that seems to recur is one of capital
21 outlay, and just the replacement of physical plant. One of the
22 questions that obviously comes up in that situation is, is it
23 necessary to sink, in many cases, tens of millions and sometimes
24 even larger amounts of money, into replacing the physical plant,
25 or should we be looking at options such as contracting for care
26 of those services in private hospitals, given that the over all
27 occupancy rate, bed occupancy rate in hospitals in California, is
28

1 certainly less than complete. So, that is an option, that it is
2 a question that we have addressed to different forms on this
3 issue.

4 I'm not sure, and as a matter of fact I'm quite
5 confident that that is not a solution to the problem in all
6 cases. It may be a viable solution in some cases.

7 There is -- I think the whole question of county
8 hospitals, of indigent care, uncompensated care, dumping, any of
9 the other terms that are used for this, it's really very
10 intricately linked with the revolution that's going on in health
11 care delivery. I think that the answer here is not an obvious
12 one; it's not an easy one. Indeed, I don't believe there is an
13 answer. And I think that thoughts that it's just a matter of
14 increasing money is really not addressing it in the full
15 complexity that the question has.

16 That's why I am constituting a task force to
17 specifically address this question. It's a task force that will
18 be comprised of Members of the Legislature, of the various
19 professional societies, of the hospital associations that are
20 involved, indeed a wide, broad-based task force to see if we
21 can't come up with some definitive answers, both in the short
22 term and in the long term.

23 SENATOR PETRIS: What's the time table?

24 DR. KIZER: The membership of that task force is
25 currently being decided. I expect to have a letter out inviting
26 participation certainly within two weeks, perhaps within the next
27 week.

1 And then, as far as the time table, I think it's going
2 to depend of what the first few meetings of that group and how
3 the task force sees its charge, and what the questions are that
4 it's going to try to address, but I would see it taking several
5 months to address the problem and to come up with the sort of
6 solutions that I think we're going to have to address.

7 SENATOR PETRIS: You don't know when you'd ask them to
8 report back?

9 DR. KIZER: I would like to have a report back by the
10 end of this year. Some of my staff have questioned whether
11 that's a realistic time line, given the complexity of this
12 question. That is certainly the sort of time line that I'll be
13 asking for, indeed I may ask for an accelerated report date.

14 SENATOR PETRIS: I wish you luck. I think that's a very
15 important mission. I just feel very disappointed and frustrated
16 at our inability, all of us together, to solve the problem of
17 health delivery on a fair and equitable basis for everybody who
18 needs it.

19 It seems sad that we had a two-tier system for so many
20 years, and that was accepted. You know, the poor, as I say, went
21 to the county hospital. Now we seem to be getting right back to
22 that all over again, and we've tried very desperately to get away
23 from that.

24 DR. KIZER: I'm confident that we can come up with some
25 answers, and that we can address the questions and the concerns
26 that are being raised.

27

28

1 I'm also, just as an aside, would like to say that I'm
2 encouraged by some of the efforts that have occurred in your
3 community. There have been some agreements worked out just
4 recently with regard to transfer patterns. When I was at Contra
5 Costa County Hospital a short while back, they have worked out
6 some solutions in that county on a medical staff to medical staff
7 basis. And indeed, solutions are being worked out.

8 I think it's a very complex question. It's one which I
9 think is going to require participation by all parties, and it's
10 one which I look forward to working with the Legislature and the
11 various professional societies to indeed come to some solutions
12 that will provide long term relief to the problems.

13 SENATOR PETRIS: The last question is on the vacancy on
14 Planned Parenthood. We talked about that before.

15 Do you have any idea how close you are to filling the
16 vacancy of the chief position in the office? You have an acting
17 director now, I guess.

18 DR. KIZER: Well, as you may or may not know, the acting
19 director filed a civil service action recently and as a result
20 left his assignment. There is currently someone overseeing that
21 position. I would hope to fill that position in a very short
22 time line, hopefully within a week or two.

23 SENATOR PETRIS: Thank you.

24 CHAIRMAN ROBERTI: Any further questions?

25 SENATOR CRAVEN: I'd be happy to move, Mr. Chairman.

26 CHAIRMAN ROBERTI: Senator Craven moves Dr. Kizer's
27 confirmation be recommended to the Floor.
28

1 Is there any opposition?

2 Seeing none, the Secretary will call the roll.

3 SECRETARY WEBB: Senator Doolittle.

4 SENATOR DOOLITTLE: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is five to nothing; confirmation is recommended
14 to the Floor.

15 DR. KIZER: Thank you, Senators.

16 (Thereupon this portion of the Senate
17 Rules Committee hearing was terminated
18 at approximately 2:50 P.M.)

19 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

10th day of February, 1986.


EVELYN MIZAK
Shorthand Reporter

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

Legislature

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17 2:00 P.M.
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26 Reported by:

27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

1 SENATOR DAVID ROBERTI, Chairman
2 SENATOR WILLIAM CRAVEN, Vice-Chairman
3 SENATOR JOHN DOOLITTLE
4 SENATOR HENRY MELLO
5 SENATOR NICHOLAS PETRIS

STAFF PRESENT

7 CLIFF BERG, Executive Officer
8 PAT WEBB, Committee Secretary
9 RICK ROLLENS, Consultant on Bill Referrals
10 NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

12
13 SENATOR BARRY KEENE
14 SENATOR ART TORRES
15 ANGELO BELLOMO, Chief
South California Section, Toxic Division
16 Department of Health Services
17 LLOYD DE LLAMAS, City Manager
City of Monterey Park
18 LILY CHEN, Councilwoman
19 City of Monterey Park
20 RICHARD MARTINEZ, Staff Member
Assemblyman Calderon
21 WILLIAM MARLIN, Staff Attorney
22 Department of Health Services
23 DIANE SHELL, Chief Counsel
Department of Health Services
24 VICTORIA GALL, Staff Counsel
25 Department of Food and Agriculture
26 BRIAN JOHNSTON
California Pro-life Council
27
28

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: We have been joined this afternoon by Senators Keene and Torres who requested to join in the questioning of the Governor's Appointment of Dr. Kenneth Kizer as the Director of the Department of Health Services.

We normally extend that courtesy to Senators in confirmation hearings if they choose to ask questions.

However, the first item of business is reference of bills.

(Thereupon the Rules Committee took up reference of bills.)

CHAIRMAN ROBERTI: Governor's Appointee appearing today, Dr. Kenneth Kizer, Director of the Department of Health Services. Dr. Kizer.

SENATOR MELLO: Mr. Chairman, may I pose a motion before we hear testimony in that we rescind the action taken by the Rules Committee at the last meeting pertaining to Dr. Kizer's confirmation.

CHAIRMAN ROBERTI: Well, the motion is in order.

Senator Mello would like to move rescission of Dr. Kizer's confirmation. I tend to think that that took place anyway when we re-referred the nomination to the Floor. It takes another motion now to move Dr. Kizer from Committee.

If you want to make a formal motion, I suspect you're in order.

1 SENATOR MELLO: The question is, he's here by his own
2 request, and even though the transcript from the last hearing is
3 in place, I think it would only be appropriate, because there is
4 a series of questions that came up after.

5 This should be done under the concept that the five to
6 nothing vote for confirmation that was made by this Committee
7 previously be rescinded. That's my motion.

8 CHAIRMAN ROBERTI: Your motion's in order.

9 I don't feel that it's necessary, but you're free to
10 make the motion, Senator.

11 Senator Mello moves that rescission of the confirmation
12 be made.

13 SENATOR DOOLITTLE: Point of order.

14 When that motion was adopted, it was a motion to refer
15 the name to the Floor. The Floor referred the name back to the
16 Committee, so there's nothing to rescind as far as I can tell.

17 SENATOR MELLO: I would only argue --

18 CHAIRMAN ROBERTI: I think Senator Doolittle may have a
19 point. We did not move to confirm. We moved to recommend
20 confirmation to the Floor. It has now been sent back to us.

21 SENATOR MELLO: Well the point is, I think --

22 CHAIRMAN ROBERTI: This is the first time this has come
23 up.

24 SENATOR MELLO: -- if our previous action is still a
25 matter of record, which I think it is, then why proceed through
26 the hearing?
27
28

1 CHAIRMAN ROBERTI: Because it's going to take another
2 motion to re-refer him back to the Floor.

3 SENATOR MELLO: What if we take no action?

4 CHAIRMAN ROBERTI: If we take no action, then the
5 nomination is still with the Committee.

6 SENATOR MELLO: Even though we passed five to nothing
7 and recommended him to the Floor previously?

8 CHAIRMAN ROBERTI: Yes, because the Floor vote controls
9 over any Committee vote, and the last statement from the Floor is
10 that the confirmation should be returned to us for a hearing.

11 SENATOR MELLO: I think we're operating --

12 CHAIRMAN ROBERTI: We could try in the meantime to be
13 getting you an opinion from counsel.

14 SENATOR MELLO: I'd appreciate that.

15 CHAIRMAN ROBERTI: While we're hearing the testimony,
16 your motion will be in order at any time.

17 SENATOR MELLO: I can withdraw it and hold it aside.

18 I just don't want -- this doesn't mean that I'm not
19 going to be supporting his confirmation. I just think that I
20 don't want the case to be de novo, to be heard as if no other
21 hearing was held. I want to preserve everything that was
22 discussed at the last hearing.

23 I think we ought to start with the premise that he's
24 here before the Rules Committee today to hear any and all matters
25 that may be before the Committee --

26 CHAIRMAN ROBERTI: Once it was referred to the
27 Committee, it was referred to us without restriction, so all
28 issues are before us.

1 SENATOR CRAVEN: So, this is a hearing de novo. You're
2 free to ask whatever questions you want.

3 SENATOR MELLO: I don't want to strike the record that
4 we had from the last meeting.

5 CHAIRMAN ROBERTI: No, that's not stricken.

6 SENATOR CRAVEN: Well, if you're starting all over
7 again, I'd say it is.

8 CHAIRMAN ROBERTI: It's not stricken; it's part of the
9 record, and it resulted in a motion that was passed that Dr.
10 Kizer's nomination be recommended to the Floor.

11 The Floor subsequently returned the nomination to the
12 Committee for further action.

13 SENATOR CRAVEN: For a specific purpose; is that not
14 correct, Mr. Chairman?

15 CHAIRMAN ROBERTI: Yes, we understand it was for a
16 specific purpose, and that was a particular issue that resulted
17 in the Monterey Park dump site, but the actual return to the
18 Floor was not restricted and we've never had a history of
19 restricting a hearing.

20 SENATOR CRAVEN: If we're going to go over everything
21 that we've gone over once before, it seems like we are in effect
22 whipping a dead horse, because that which we went over before was
23 listened to, discussed, debated, whatever you want to say, and
24 resulted in a 5-0 vote.

25 Now, if there is a new item, I think that's very
26 appropriate that it be discussed, but I don't know that it should
27 really entail the gathering in of everything that we've discussed
28

1 heretofore. I think that the new item should be discussed, or
2 new items, as the case may be, but I don't know why we should
3 have to go over the whole thing.

4 CHAIRMAN ROBERTI: Why don't you raise your objection if
5 it appears that's what's taking place, and why don't we wait and
6 see what happens?

7 I would say that the Floor action did not restrict our
8 questioning.

9 Senator Petris.

10 SENATOR PETRIS: It seems to me Senator Mello is trying
11 to get it procedurally clean, and I don't think it hurts to
12 rescind. We will obviously take a vote one way or the other
13 after we hear it.

14 Another problem is that we may have some questions on
15 some prior ground that was covered, but now looks different
16 because of additional information that we may not have had
17 before.

18 So, I would like to support the motion just for
19 procedural purposes, without prejudice to what we ultimately do
20 after we've finished our hearing.

21 CHAIRMAN ROBERTI: Why don't we wait and try to get a
22 counsel opinion --

23 SENATOR PETRIS: All right.

24 CHAIRMAN ROBERTI: -- on the matter as to whether the
25 motion is properly before us.

26 My feeling is that the Floor action controls. The Floor
27 action referred the nomination to Committee, but it did not refer
28

1 the not refer the nomination to Committee with restriction;
2 therefore, we don't have to go through the motion of rescission,
3 yet the hearing is open to all questions.

4 Until I get a counsel opinion, I'm going to indicate
5 that that is how the Chair will operate.

6 Dr. Kizer.

7 DR. KIZER: Good afternoon.

8 Thank you, Senator Roberti and the Committee, for
9 holding this hearing today so that I can report to you the facts
10 regarding my involvement in the Operating Industries matter, in
11 addition to allowing you -- allowing me an opportunity to review
12 the details of the situation for the Committee so that it can
13 come to its own conclusion as to what is the best alternative for
14 the State of California in this matter.

15 Mr. Chairman and other members of the Committee, I would
16 also like to thank you for withholding public comment of this
17 matter until you've had the opportunity to hear the facts. I
18 believe this underscores your commitment to act responsibly and
19 your desire to speak on an informed basis.

20 This is quite unlike the two reporters from the San Jose
21 Mercury News who, while having been informed of the facts, appear
22 to have intentionally and maliciously selectively edited those
23 facts so as to write a series of grossly inaccurate and
24 misleading articles on this matter. Indeed, I believe that David
25 Willman's and Susan Yoachum's reporting on this matter are a
26 discredit to the rest of the Capital Press Corps, to the San Jose
27 Mercury News, and to journalists in general.

1 In any case, during the past two weeks as I have
2 reviewed the Operating Industries matter in my mind, trying to
3 view it from your perspective, it appears to me that there are
4 six key questions that need to be answered. These questions are:

5 One, what is the history --

6 SENATOR KEENE: Question, Mr. Chairman.

7 CHAIRMAN ROBERTI: Senator Keene.

8 SENATOR KEENE: Mr. Chairman, is the witness going to
9 pose the questions and then answer them, or do we get to pose
10 questions?

11 CHAIRMAN ROBERTI: Well, I would prefer you write your
12 questions down. I think I would prefer the witness to go through
13 his statement.

14 Usually the witness's statement is his own advocacy
15 position, and you have to take it in that light.

16 SENATOR KEENE: I just feel that there are relevant
17 questions that need answering. We have a limited amount of time.

18 DR. KIZER: I think many of the questions you have --

19 SENATOR KEENE: If the witness is going to both pose his
20 own questions and answer his own questions, I'm afraid that we're
21 not going to get very much accomplished because that's going to
22 be obviously self-serving. There are some questions that do
23 require an answer, and we may not have time to do that.

24 If you'll guarantee that we --

25 CHAIRMAN ROBERTI: We're going to be here for a while.

26 SENATOR CRAVEN: There obviously, then, has been a time
27 limit placed on this hearing, unlike any hearing that we've ever
28 had heretofore?

1 CHAIRMAN ROBERTI: No, you've sat with us, Senator,
2 until seven o'clock.

3 We exhaust the subject matter, Senator.

4 SENATOR CRAVEN: There must be a better word than that.

5 (Laughter.)

6 CHAIRMAN ROBERTI: I would suggest that Dr. Kizer go
7 through his statement, and the opening statement is his best
8 advocacy position of his statement for confirmation. And
9 everybody will then have a chance to ask questions.

10 SENATOR KEENE: He will have to answer our questions in
11 addition to his own questions?

12 CHAIRMAN ROBERTI: He will have to answer your
13 questions.

14 SENATOR KEENE: That's all I wanted to know.

15 DR. KIZER: It's hard for me to imagine otherwise.

16 These questions are:

17 One, what is the history of the property in question?

18 Two, what is the process by which the property came to
19 be proposed for inclusion on the National Priorities List, or the
20 Superfund as it is more commonly called, and how did the
21 controversy arise as to what should be the boundaries of the
22 proposed site?

23 Three, what is the technical disagreement between the
24 California Department of Health Services, along with other State
25 agencies, and EPA Region 9?

26 How did I personally become involved in this matter and,
27 relatedly, what was the involvement of the Governor's Office?

28

1 Five, what are the benefits to viewing the two parcels
2 of land as separate and distinct and thus considering a
3 remediation plan for each or specific to each:

4 And six, what are the likely consequences if the entire
5 45 acre northern parcel is included with the southern parcel and
6 the entire parcel listed on the Superfund?

7 Let me respond to those questions, beginning with a
8 brief history of the Operating Industries property.

9 Originally, Operating Industries, Incorporated, or OI as
10 it is often referred to, owned 218 acres in the Merced Hills in
11 Monterey Park, which is located about nine miles east of downtown
12 Los Angeles. The southern part of this land was used as a quarry
13 until 1948, when it began being used as a municipal garbage
14 disposal facility. Similarly, in 1948, fourteen acres of the
15 northern part of the land started to be used as a municipal
16 garbage dump.

17 The northern parcel was used as a municipal refuse
18 facility until early 1952, after which all disposal operations
19 were moved to the southern part of the property.

20 After 1952, the northern part of the land was not used
21 as a disposal facility of any kind.

22 In 1954, the State of California purchased 28 acres of
23 the OI land as right-of-way for the Pomona Freeway, which was
24 constructed in the early 1960's.

25 In 1964, during construction of the Pomona Freeway, the
26 majority of the municipal landfill that had been located on the
27 northern part of the Operating Industries property was totally
28

1 excavated by Cal Trans. Therefore, subsequent to this time,
2 there existed two discrete parcels of land: a 45 acre parcel
3 north of the Pomona Freeway, which included about 6 acres of the
4 original Monterey Park sanitary landfill, and a 145 acre parcel
5 of land south of the freeway, which continued to be used as a
6 municipal and commercial refuse disposal facility until 1984.

7 In 1976, a 32 acre parcel of the southern property began
8 to be used as a disposal site for liquid hazardous waste pursuant
9 to Regional Water Quality Control Board waste discharge
10 requirements. In December 1981, the site was issued an Interim
11 Status Document in order to continue to accept liquid hazardous
12 waste, but in January 1983, Operating Industries chose to cease
13 accepting liquid hazardous waste rather than attempt to meet
14 final permitting requirements for a hazardous waste disposal
15 facility.

16 In October 1984, Operating Industries ceased accepting
17 municipal refuse. Since then, it has only accepted clean fill
18 dirt which is primarily used for cover over the former landfill.

19 Operating Industries submitted a closure plan for their
20 facility to the Department of Health Services in June 1983; this
21 plan was judged to be inadequate and was rejected. Since then,
22 Operating Industries has been the subject of legal action by the
23 Department of Health Services and several other state agencies.

24 Also in 1983, the Department of Health Services proposed
25 to EPA that Operating Industries be listed on the NPL.

26 In summary, then, the key historical factors relevant to
27 our discussion today are:
28

1 One, since 1954, there have been two discrete pieces of
2 land which in 1964 became separated by the Pomona Freeway.

3 Two, of these two pieces of property, a northern and a
4 southern parcel, the northern parcel contains the remnants of a
5 small municipal landfill which, as far as I know, was never used
6 as a hazardous waste disposal facility.

7 And three, the southern parcel was not used as a
8 hazardous waste disposal facility until many years after the
9 freeway separated the two parcels of land, although the Regional
10 Water Board in 1954 did authorize disposal of some industrial
11 waste, including paint sludge, which by today's standards may be
12 defined as hazardous waste.

13 SENATOR KEENE: Question.

14 DR. KIZER: Now with regard to the second question --

15 SENATOR KEENE: For purposes of clarification, you say
16 as far as you know the northern 45 were never used as a hazardous
17 waste disposal site?

18 DR. KIZER: That is what I said.

19 SENATOR KEENE: Yet your Department granted interim
20 permit authority for it to be used in that fashion?

21 DR. KIZER: No.

22 SENATOR KEENE: Never did.

23 DR. KIZER: That's correct.

24 SENATOR KEENE: What was the interim permit authority?

25 DR. KIZER: For the southern portion.

26 SENATOR KEENE: Only for the southern portion?

27 DR. KIZER: That's correct.

28

1 SENATOR KEENE: You at no time granted interim permit
2 authority for the northern portion?

3 DR. KIZER: As I said, since 1952, nothing has been
4 disposed of on the northern land.

5 SENATOR KEENE: As far as you know.

6 DR. KIZER: Well, as far as we know and as far as a lot
7 of other people know who have looked at this very closely.

8 SENATOR KEENE: So there was never any interim status
9 granted to the northern parcel?

10 DR. KIZER: That's correct.

11 SENATOR KEENE: Thank you.

12 DR. KIZER: Now, with regard to the second question
13 about how the Operating Industries property came to be proposed
14 for inclusion on the National Priorities List, let me review the
15 sequence of events that transpired.

16 In November 1983, the Department of Health Services
17 completed a hazard ranking assessment of the Operating Industries
18 landfill and recommended to EPA that the property be included on
19 the NPL. Importantly, the ranking package that was prepared in
20 the Los Angeles office did not include a precise statement of the
21 size of the site, although the references attached to the package
22 clearly indicated that the hazardous waste disposal site was
23 considered to be 130 of the 145 acres south of the Pomona
24 Freeway. This was the same area listed on the RCRA Part A form
25 submitted by Operating Industries and permitted by the Solid
26 Waste Management Board on December 19, 1978.

27
28

1 I can find no documents indicating that the Department
2 ever recommended to EPA that the NPL listing should include both
3 the northern 45 acre and the southern 145 acre parcels of land,
4 although in some of the attachments in the ranking package the
5 disposal area was erroneously referred to as being 190 acres.

6 In 1984, the City of Monterey Park began working with
7 various developers on potential uses of the 45 acre parcel of
8 land north of the freeway. Eventually, a developer was
9 identified and a development plan and purchase agreement were
10 approved.

11 In early 1985, an environmental assessment report was
12 performed on the redevelopment plan, a fiscal agreement was
13 worked out with the County of Los Angeles, and the project was
14 formally adopted by the City after a public hearing.

15 The redevelopment plan was worked out by the Department
16 of Health Services, the Redevelopment Agency and the Los Angeles
17 Superior Court, and pursuant to a Remedial Action Order resulting
18 from several multi-agency lawsuits against Operating Industries,
19 the Los Angeles Superior Court authorized the sale of the 45 acre
20 parcel north of the freeway and ordered that the \$7.2 million
21 dollar proceeds of the sale be placed in a landfill trust to help
22 pay for the proper closure of the former hazardous waste landfill
23 south of the freeway. These funds would be used to help finance
24 permanent controls for methane and leachates, improved drainage
25 facilities, landscaping and other measures to insure
26 environmental and public health protection.

27
28

1 It is perhaps worth emphasizing that this proposed sale
2 was the specific result of a court settlement of a suit against
3 Operating Industries which the Attorney General's Office and
4 several other agencies concurred with.

5 As part of the proposed development, the remnants of the
6 smaller landfill on the north side of the freeway would be
7 excavated as part of the construction of the new freeway
8 interchange and commercial project. That excavation would be
9 performed under the supervision of the California Department of
10 Health Services, the South Coast Air Quality Management District,
11 Cal Trans, the Regional Water Quality Control Board, and the Los
12 Angeles County Department of Health Services.

13 About this same time, April 1985, EPA announced that
14 both the northern and the southern parcels of land had been
15 proposed by EPA for inclusion on the NPL. Department staff
16 recognized at this time that this was not consistent with the
17 original ranking package, but additional environmental testing
18 was being done on the land. Thus, written notice to EPA asking
19 for the error to be corrected was not sent until October 1985, by
20 which time the additional environmental sampling had been
21 completed. Although formal written notice of this error was not
22 posted until nearly six months after it had been noted, this
23 subject was discussed a number of times during this interval at
24 meetings of the Interagency Steering Committee, of which EPA is a
25 member.

26 Since April 1985, EPA Region 9 has maintained its
27 position that all 190 acres should be listed on the NPL.
28

1 Conversely, the Department of Health Services and the Interagency
2 Steering Committee have consistently maintained that such a
3 position is not warranted.

4 Cognizant of this disagreement, EPA headquarters, which
5 has the responsibility for making the final decision on the
6 matter, has solicited input from all the involved parties. This
7 has included two meetings in Washington, D.C., to hear arguments
8 for and against inclusion of the northern parcel.

9 This takes us, then, to the third question, which has to
10 do with the technical disagreement between the staffs of the
11 Department of Health Services and EPA Region 9, although I think
12 it's important to point out that it is really a disagreement
13 between EPA Region 9 and the State Department of Health Services
14 and several other State agencies that sit on the site's
15 Interagency Steering Committee.

16 As with all former municipal garbage disposal areas, it
17 is true that the parcel of land in question produces methane gas
18 and that it contains some hazardous constituents. Indeed, my
19 staff advise me that the concentrations of methane gas, organic
20 chemicals and heavy metals found in the section of the parcel
21 that used to be municipal landfill are typical of what one would
22 expect in any old landfill, which of course is likely to contain
23 old paint and solvent cans, car batteries, and related types of
24 materials.

25 Of course, it is possible that some of these old
26 landfills may be the repository of some other materials because
27 of the dumping practices used days gone by, but that should not
28

1 be a deciding factor in our consideration of this case since the
2 area is going to be cleaned up under the supervision of the
3 several agencies already mentioned.

4 It is also worth noting that the area I'm referring to
5 constitutes less than 15 percent of the property in question.
6 Further, I have been advised that EPA has never scored or ranked
7 this northern parcel of land as a separate entity, but if the
8 property were considered by itself, it would not qualify for
9 inclusion on the NPL.

10 Now, although EPA Region 9 seems to agree with the
11 above, it contends that not enough is known about the parcel.
12 This is a point about which we disagree. The area was never used
13 as a hazardous waste disposal facility, and the area that was
14 formerly used as a municipal landfill has been the subject of
15 three separate environmental studies. On one of these studies,
16 the Department required split samples to be run, and the
17 Department's laboratory verified the validity of the private
18 consultant's work. As an aside, it is worth noting that EPA
19 Region 9 has never done any sampling or verification of its own.
20 In any case, these tests indicate trace amounts of several
21 organic compounds as well as some localized deposits of heavy
22 metals, all of which are consistent with what one might find in
23 any old municipal landfill.

24 I suppose it's also relevant to note that the types of
25 contaminants found on the northern parcel are significantly
26 different from those found on the southern parcel. The hazardous
27 wastes deposited in the southern parcel when it was operating as
28

1 a hazardous waste disposal facility were primarily oil well
2 drilling muds, paint waste, acetylene, petroleum sludges, and
3 similar compounds. Contaminants found in the southern parcel
4 leachate are mainly organics, with relatively low levels of
5 metals. Conversely, samples from the northern parcel show some
6 heavy metals and much less organics than the southern parcel.
7 This further supports the Department's contention that we are
8 dealing with two distinctly different sites.

9 EPA Region 9 has also indicated that it believes the
10 leachate treatment plant and methane recovery plant should be
11 moved to the northern parcel. The Department and other agencies
12 do not agree with EPA Region 9.

13 There is space for the leachate treatment plant on the
14 southern parcel, and the Los Angeles County Engineer concurs with
15 the suitability of the proposed location of the plant on the
16 southern parcel; that is, where it was originally planned.

17 As far as the methane gas recovery plant, again, the
18 Department, other agencies, and the current operator of the plant
19 believe that moving the plant from its existing location would
20 not be wise for both technical and economic reasons.

21 To summarize these points, then, we believe that parts
22 of the northern parcel must be cleaned up under close scrutiny by
23 the several relevant government control agencies; however, we
24 believe that cleanup of this land is similar to what will occur
25 many times in the future as we gradually clean up the hundreds of
26 old municipal landfills that exist in California, few or none of
27 which will ever be proposed for the Superfund.
28

1 This takes me to the next question; that is, how did I
2 personally get involved in this matter.

3 Beginning last summer, staff of the Department of Health
4 Services and EPA Region 9 began discussing the above noted
5 disagreements. In November 1985, a meeting of the relevant
6 parties was held at EPA headquarters in Washington, D.C., with
7 staff from the Department in attendance to present the
8 Department's position. This was per EPA's invitation.

9 Subsequent to the November meeting in Washington, D.C.,
10 we were advised --

11 CHAIRMAN ROBERTI: Senator Torres.

12 SENATOR TORRES: Would you please backtrack your
13 statement as to when you became involved, the first meeting,
14 which is in November, you said?

15 DR. KIZER: Let me just start with that paragraph, then.

16 SENATOR TORRES: Thank you, Mr. Chairman.

17 DR. KIZER: Beginning last summer, staff of the
18 Department of Health Services and EPA Region 9 began discussing
19 the above noted disagreements. In November 1985, a meeting of
20 the relevant parties was held at EPA headquarters in Washington,
21 D.C., with staff from the Department in attendance to present the
22 Department's position.

23 SENATOR TORRES: Who else was there?

24 DR. KIZER: There was John Ramey of the Department, Tom
25 Warner of the Health and Welfare Agency. I don't know that there
26 was anybody else representing the State.

27 SENATOR TORRES: Thank you.

28

1 DR. KIZER: Subsequent to the November meeting in
2 Washington, D.C., we were advised by EPA that they wanted to hold
3 another meeting and that they wanted someone to attend who was in
4 a higher position and who could speak for the State,
5 quote-unquote. This was affirmed on December 12, 1985, during a
6 conference call involving myself, Acting Secretary of the Health
7 and Welfare Agency Jim Stockdale, along with several members of
8 both of our staffs, and Jim Barnes, Deputy Administrator for EPA.
9 This request was later reiterated in a telephone conversation
10 between Dr. Winston Porter of EPA and John Ramey of my staff.

11 About this same time, I contacted the Governor's Office
12 and requested permission to go to Washington, D.C., to represent
13 the State. As you might imagine, it is a general policy to get
14 such permission from the Governor's Office before portraying any
15 position to a federal agency as the official State of California
16 position.

17 On December 31, 1985, having not heard anything back
18 from the Governor's Office, I called and again requested
19 permission to present the Department's position to EPA.
20 Following a brief discussion, I was given permission to go to
21 Washington to speak for the State.

22 As an aside, I might say that I combined that with
23 business at CDC headquarters in Atlanta.

24 Given the allegations made by the previously --

25 SENATOR MELLO: Doctor, who gave you that permission?
26 You said you got permission to go to Washington.

1 DR. KIZER: The Governor's Cabinet Secretary, Art
2 Scotland.

3 SENATOR MELLO: Steve Merksamer?

4 DR. KIZER: I've never discussed this with Steve
5 Merksamer.

6 SENATOR MELLO: I'd like to get the name of the person
7 --

8 DR. KIZER: Art Scotland.

9 SENATOR MELLO: Thank you.

10 DR. KIZER: Given the allegations made by the previously
11 mentioned reporters, I think a couple of points need to be
12 emphasized here:

13 First, I went to the meeting at EPA headquarters in
14 Washington, D.C., on January 7, 1986, only after EPA requested
15 it.

16 Second, the Governor's Office was involved in this only
17 insofar as we requested their concurrence with the position that
18 the Department had been espousing for several months.

19 And third, at no time did the Governor's Office initiate
20 contact with the Department on this issue. Indeed, they
21 indicated that they had no objections only after we pressed the
22 matter.

23 Now, in the next few minutes let me outline exactly for
24 you what the Department feels are the benefits of developing the
25 northern parcel of the Operating Industries property, for we feel
26 that these far outweigh any uncertainties that may exist about
27 the absolute characterization of this land.
28

1 First, the development plan specifies that all known
2 environmental concerns will be taken care of by the developer.

3 Second, the proceeds of the sale would immediately
4 provide for several million dollars that could be used to control
5 or remediate problems related to the southern parcel, which
6 everyone seems to agree belongs on the Superfund. Given the
7 limited availability of federal Superfund dollars, common sense
8 tells us to use private funds in cases where such are available.
9 The wisdom of this has recently been well demonstrated with
10 regard to this site, as I will mention in a minute.

11 In general, the Department believes that the limited
12 Superfund dollars available should be used to address the serious
13 environmental threats related to the southern parcel, as well as
14 other sites posing environmental problems of a similar magnitude.
15 We do not believe that such funds should be used to clean up less
16 serious problems, such as those posed by the northern parcel, for
17 if this is done, then there will never be enough federal money to
18 clean up the large sites.

19 Third, the development plan provides for cleanup of an
20 old municipal landfill in an expeditious and environmentally
21 sound manner. Indeed, there is an optimal combination of
22 influences at work here. The City's desire to complete the
23 development project means that the work will be done without
24 delay, yet cleanup will be conducted under the close scrutiny of
25 this Department and several other government agencies. And it
26 will be cleaned up to the State of California's standards, which
27 are more stringent than EPA's.
28

1 And I suppose it's important to emphasize that our
2 perspective is that even if something is found in this old
3 landfill that is not known about at this time, as may be the case
4 with any old municipal landfill, the cleanup will be conducted
5 under the close surveillance of several State agencies, and any
6 such unforeseen findings will be dealt with as needed. Just
7 because there is a possibility that something unknown may be
8 found, despite that being unlikely based on existing data, that
9 is not a sound reason to list the site on the Superfund.

10 Fourth, development of the parcel provides for a number
11 of public improvements on the property and corrects the currently
12 blighted uses and conditions of this land.

13 Fifth, the development plan provides for construction of
14 a major north-south thoroughfare that will ease the present
15 traffic flow problems, and it would eventually link the cities of
16 Monterey Park and Montebello.

17 Sixth, development of the area into a business park will
18 create 3,000 new jobs and generate over \$1 million per year in
19 sales tax for the City of Monterey Park.

20 These are the primary benefits that will be achieved by
21 viewing the 45 acre northern parcel as a separate and distinct
22 site, having its own remediation plan.

23 Conversely, let's now look at the likely consequences of
24 including the northern parcel on the NPL, along with the southern
25 property. Several untoward consequences are likely:

26 First, the prospective developer has made it clear that
27 they will not go forward with the planned development if the land
28

1 is listed on the Superfund. This is an understandable position.
2 Of course, this means:

3 Loss of several million dollars of private funds to
4 control and remediate the problems associated with the southern
5 property, which is a loss to all taxpayers;

6 Loss of an important new roadway and freeway offramp;

7 Loss of 3,000 new jobs;

8 Loss of \$1 million in sales tax revenue for the City of
9 Monterey Park;

10 Loss of an opportunity to cleanup an old municipal dump;

11 Loss of an opportunity to cleanup a blighted area, and
12 overall,

13 Loss of an opportunity for a local community to improve
14 itself.

15 I think the potential loss of this source of private
16 funding to control and remediate the problems posed by the
17 southern site is especially notable in light of recent
18 developments. Last month, EPA Region 9 wrote to the Department
19 asking if we would take over payment for the operation and
20 maintenance of the leachate collection system for the southern
21 property. This is necessary to protect the public health of
22 persons living around the former hazardous waste dump on the
23 southern parcel. These services cost over a million dollars a
24 year. Unfortunately, Superfund is out of money, and EPA is
25 coming to the State for a loan.

26 It seems to me to make sense to take advantage of the
27 opportunity to use the responsible party's funds that would be
28

1 put in the landfill trust account to manage problems such as
2 this.

3 A second untoward consequence of listing the northern
4 parcel on the Superfund will be a delay in cleaning up the old
5 municipal landfill.

6 If this property is included on the Superfund, then
7 cleanup of the remaining old landfill on the northern parcel will
8 be delayed by at least three years while EPA studies it further.
9 However, I expect the delay won't be three years; instead, it
10 will probably be 30 years or more in light of the record on
11 cleaning up other Superfund sites.

12 In this case we have the opportunity to cleanup a site
13 quickly and safely, and I think we should do it.

14 Third, if both the northern and the southern parcels of
15 land are included on the Superfund, I fear that the State of
16 California will become obligated as a responsible party for the
17 cleanup of the southern property because of the State's ownership
18 of the Pomona Freeway right-of-way. My legal staff advise me
19 that there is a sound legal basis for this fear, and EPA
20 officials acknowledge that they have, quote, "considered",
21 unquote, this prospect.

22 Recently, EPA has verbally reported that they do not
23 plan to include the Pomona Freeway in the Superfund listing if
24 both parcels of land are listed, implying that the State would
25 not become a responsible party. However, if this is true then
26 inclusion of the northern parcel is quite illogical, since
27 omitting the freeway from their proposed site is a clear
28

1 statement that these are indeed separate and distinct sites, the
2 northern one of which by itself would not rank high enough to be
3 included on the Superfund if it were scored. Therefore, I am
4 skeptical of EPA's implied assurance that they will not obligate
5 the State for cleanup of the southern site, and I believe that
6 serious consideration should be given to whether this was not
7 their real motive all along.

8 In conclusion, I hope that these comments clarify the
9 basis of the Department's position with regard to this matter and
10 that they make it clear that our position is sensible and
11 reasonable.

12 I hope that it is also clear that the Department of
13 Health Services has pursued this matter because it makes good
14 sense, whether one considers public health or economic health,
15 and not because of favoritism to someone who contributed to the
16 Governor's campaign, as was scurrilously alleged by David Willman
17 and Susan Yoachum. Indeed, I learned about a campaign
18 contribution only after and as a result of their articles.

19 And let me finish these remarks on a personal note. I'm
20 new to the political arena, having spent my entire previous
21 career as a health care professional, and I find certain things
22 about this new life curious. One example of this is the apparent
23 notion that my professional judgement and decisions might be in
24 some way influenced by such irrelevant information as who donated
25 to whose election campaign. To me, that's about as absurd as
26 saying that I would decide what laboratory tests to order or
27 which medications to prescribe for a patient according to whose
28 friend they were or whether they contributed to the hospital.

1 No, when I practice medicine, the patient gets what is
2 needed on the basis of my professional judgement, regardless of
3 who they are. And I don't see my present practice of protecting
4 the public health of California as any different.

5 I think with that, Mr. Chairman, let me now respond to
6 any questions which you or members of the Committee may have.

7 CHAIRMAN ROBERTI: Thank you, Dr. Kizer.

8 We'll take this in order. I have just a couple that I
9 would like to start with preliminarily, then I will go to the
10 members of the Committee and the two Senators who have requested
11 to ask questions, and then I might finish with a couple of
12 questions myself.

13 DR. KIZER: Senator, if I might just interject, I might
14 mention that I do have some staff here who may be helpful in
15 responding to the technical points as well as --

16 CHAIRMAN ROBERTI: Any time you want to bring somebody
17 up, especially on a technical point, please feel free to request
18 and it will be granted.

19 You indicated that the meeting with EPA was the result
20 of their request. Some press reports, I think specifically one
21 in the Riverside Press Enterprise, indicated that Mr. Thomas
22 Warner, Deputy Secretary of Health and Welfare, initiated that
23 meeting.

24 Did you ever discuss the meeting with him? Did you
25 discuss it prior to meeting with EPA? And did he recommend this
26 meeting?
27
28

1 DR. KIZER: It's -- Mr. Warner's involvement insofar as
2 I understand it was related. He was counsel to the agency and
3 had been involved in some of the legal actions and had consulted
4 with our counsels on some of this, and had gone with John Ramey
5 to Washington at that meeting in November from that perspective,
6 since our chief counsel was not available to do that.

7 I'm not sure exactly what you're asking as far as what
8 specific discussions. The discussions I had with Mr. Warner
9 subsequent to that were only in that regard.

10 CHAIRMAN ROBERTI: I'm trying to find out the genesis of
11 the meeting. Was it something that EPA came up with and then
12 requested the Department of Health to enlighten them as to its
13 position? Or in some way is the Department of Health or the
14 Health and Welfare agency --

15 DR. KIZER: We, as should be clear --

16 CHAIRMAN ROBERTI: -- instigate the meeting itself?

17 DR. KIZER: No, I should be clear. We do not agree with
18 EPA Region 9 on this; however EPA Region 9 does not make the
19 decision. It is made in Washington.

20 They are aware, and we have made them aware, that we
21 disagree with them on some technical basis, and it was
22 characterized to me after the meeting in which Mr. Ramey and Mr.
23 Warner went to Washington, and this was affirmed in the
24 conversation I had with Mr. Barnes, that they were viewed as,
25 quote-unquote, "mid-level bureaucrats", and quote-unquote,
26 "underlings", and that they could not speak for the State, and
27 that when they had this subsequent meeting, they wanted someone
28

1 who could speak for the State of California and represent what
2 the State's position was.

3 And it was at that point that basically that I got
4 involved in it.

5 CHAIRMAN ROBERTI: Have you ever attended a meeting, or
6 had your predecessor ever attended a meeting, in which the
7 Department of Health sought a standard on toxic cleanups less
8 severe than the standard which EPA has?

9 DR. KIZER: I've never participated in a meeting, and
10 I'm unaware of my predecessor.

11 CHAIRMAN ROBERTI: This would be assuming a standard
12 that's less severe. This would have been the first meeting that
13 you ever attended?

14 DR. KIZER: I'm not sure I understand your question?

15 CHAIRMAN ROBERTI: Well, I'm taking the fact that the
16 Department of Health Services wants -- well, we'll talk about the
17 NPL.

18 Have you ever attended a meeting in which you have
19 requested that any other dump site be removed from the NPL?

20 DR. KIZER: No, and I think that there's a couple of key
21 points here.

22 One is that we are not requesting that this site be
23 removed from the NPL. There's a portion which we do not agree
24 with EPA's staff that should be included.

25 EPA has informed me that this is a unique site in their
26 entire history of considering sites for listing. It's the only
27 area, the only site, that's ever been proposed that has either a
28

1 man-made or natural dissection of the site into two parcels so
2 that you really have -- you have two discreet parcels that are
3 being considered here.

4 As portrayed to me, this is unique in their
5 consideration, and they just have not confronted this before, and
6 that's part of the problem.

7 CHAIRMAN ROBERTI: So you believe that the southern
8 section should be included within the NPL?

9 DR. KIZER: No question about that. We feel very
10 strongly --

11 CHAIRMAN ROBERTI: Was there some correspondence from
12 you indicating otherwise? I tend to recall having read something
13 in the press that you had written a letter in which the number of
14 acres called for the full inclusion of the entire site.

15 You indicated that was an error?

16 DR. KIZER: No, that's again a key point where there's
17 been some confusion in that, one, I have never written those
18 letters.

19 The error was that in the original ranking proposal, the
20 -- some of the attachments from the Regional Water Board in 1976,
21 and I think there was one or two other items in that package that
22 were included as attachments, referred to the disposal area
23 erroneously as 190 acres. That's an error because after 1952,
24 nothing was disposed of on the northern part.

25 CHAIRMAN ROBERTI: So, you've never ever indicated to
26 EPA that the southern section should be removed?

27

28

1 DR. KIZER: Never. I mean, we were the ones who put it
2 there; we're the ones who've been pursuing legal action against
3 them.

4 CHAIRMAN ROBERTI: On the northern section, back to the
5 original point that I was trying to make, you've never lobbied,
6 however, other than this one site, that a dump site, or whatever
7 it's called, should be removed from the NPL?

8 DR. KIZER: No, and I think the choice of words there,
9 lobbied, implies things that are not correct.

10 What EPA wanted was someone who could portray the
11 Department's position, and that they were comfortable they were
12 getting a high enough level that they could indeed view that as
13 truly the Department's position and the State's position. And
14 that is the only purpose and the only reason I went there was
15 pursuant so that they were comfortable that they were getting a
16 high enough level person to represent the State.

17 CHAIRMAN ROBERTI: The criteria that you've indicated,
18 or the benefits, rather, and I think that's a better word, that
19 you've indicated would result from the northern site being
20 exempted, or rather being taken off the NPL list, generally deal
21 with economic criteria.

22 DR. KIZER: There's one other that --

23 CHAIRMAN ROBERTI: Which is the other?

24 DR. KIZER: Well, the real key point here, I think, is
25 that we're talking about cleaning up that old dump. And we feel
26 that under the development plan that that dump will get cleaned
27 up quickly and safely, and it will also generate some benefits
28 for the local community.

1 CHAIRMAN ROBERTI: You're saying it will be cleaned up
2 more quickly and safer by its exclusion from the NPL?

3 DR. KIZER: That's correct. That's our position.

4 CHAIRMAN ROBERTI: Would you explain that one more time,
5 how that comes about?

6 DR. KIZER: Basically that for the development to
7 proceed, they have to clean up the 6 acres or so of old landfill
8 that's there. The City wants to -- the development to occur;
9 therefore, they have a time line in which they want that cleaned
10 up.

11 That cleanup will occur under the close scrutiny of the
12 Department, the other relevant agencies, the Water Board, the Air
13 Board, Cal Trans, et cetera. And so, basically it's going to get
14 done because there are other influences here to make it happen
15 soon.

16 We know that EPA, according to their statements, and
17 again, some of these come from the press, is that they would want
18 to study it for at least three additional years. However, if we
19 look at the track record of Superfund sites, we suspect that it
20 will be many, many years before that is ever touched under that
21 scenario.

22 Conversely, we think within a period of two to three
23 years, it will be cleaned up and the development will be
24 completed under the development plan.

25 I think it may be worthwhile, perhaps, for Angelo
26 Bellomo, Chief of our Southern California section, to make some
27 comments here as well as, perhaps, Mr. Lloyd de Llamas, the City
28 Manager of Monterey Park.

1 SENATOR TORRES: Are they up for confirmation?

2 CHAIRMAN ROBERTI: No, but if they want to speak to the
3 point which I raised, because I think that there is an important
4 question here, and that is that to the extent that the Department
5 of Health should be involved in issues that are not health
6 criteria, and I'm trying to find out what the health criteria
7 were in this --

8 DR. KIZER: I think one of the things that has been
9 overlooked, or at least misconstrued in the press, is somehow
10 that we view this northern parcel as pristine and wonderful, and
11 that it doesn't need any work. And that's absolutely not the
12 case.

13 We don't think it falls in the same category as the
14 southern parcel, in which we feel there's no question that that
15 should be on the Superfund. We think that it does have
16 contaminants on it; it does have problems in a portion of it.

17 And the question here is, what's the best way to get
18 that cleaned up, and what's the quickest way to get it cleaned
19 up.

20 CHAIRMAN ROBERTI: Please identify yourself.

21 MR. BELLAMO: I'm Angelo Bellomo, Chief of the Southern
22 California Section of the Toxic Division. My office is in Los
23 Angeles.

24 Just responding to your question, Senator Roberti, one
25 of the first things I did when I joined the Department in
26 November of '83 was to propose that this site be listed on the
27 National Priorities List.
28

1 Here we are two and a half years later --

2 CHAIRMAN ROBERTI: Both sites, northern and southern?

3 MR. BELLAMO: No, no, just the hazardous waste landfill,
4 the Operating Industries site.

5 CHAIRMAN ROBERTI: That's the southern site?

6 MR. BELLAMO: Southern portion.

7 I think it's also quite correct, as pointed out earlier,
8 that we're going to run into this situation many times in the
9 future. I've got a list now of about 100 candidate sites in Los
10 Angeles County alone that are old municipal landfills that will
11 require the same kind of close scrutiny that my Department and
12 several local and regional agencies have placed on this northern
13 parcel.

14 We don't propose that the northern parcel be placed on
15 the NPL any more than we would propose that 99 percent of the
16 sites that we work on are place don the National Priorities List.
17 It has a tendency of demeaning the importance of sites that are
18 placed on that list.

19 CHAIRMAN ROBERTI: Do you believe that these are really
20 two essentially separate sites, the northern site and the
21 southern site?

22 MR. BELLAMO: My office considers the southern parcel to
23 be the former hazardous waste disposal site. And as a result, I
24 consider the piece of property on the other side of the Pomona
25 Freeway the way I would consider several other adjoining
26 landfills if they were in the immediate area.

1 CHAIRMAN ROBERTI: To your knowledge, there was never
2 any hazardous waste disposal on the northern site?

3 MR. BELLAMO: I think it would be foolish for any of us
4 to believe that just because we identified a former site as a
5 municipal refuse site that it didn't receive hazardous waste.
6 Just through normal household refuse the site is going to receive
7 some hazardous waste. And with past disposal practices, I think
8 even some industrial wastes could have gone in there.

9 CHAIRMAN ROBERTI: How many years of disposal occurred
10 in the northern site again?

11 DR. KIZER: A little less than four, from 1948 until
12 1952.

13 CHAIRMAN ROBERTI: But there was no essential difference
14 in the components of material? It was merely a question of time?

15 MR. BELLAMO: That's not right.

16 DR. KIZER: They were both municipal landfills in the
17 early years, and I forget the exact date, but I think it was 1951
18 or 1952 that the southern site at that time was designated as a
19 commercial disposal site in addition to being a municipal
20 disposal site.

21 CHAIRMAN ROBERTI: So, that means that the probability
22 is that the types of disposal would be different in quantity, but
23 there's no regulation as to differences between what would be
24 commercial and a normal municipal landfill site?

25 MR. BELLAMO: The only assurances we would have is the
26 waste discharge requirements issued by the Regional Board in
27 1954. I think that any hazardous waste site, or any municipal
28

1 refuse site prior to 1976, there was potential for some waste
2 going in.

3 CHAIRMAN ROBERTI: What happened in 1952 that the
4 northern site was taken off?

5 DR. KIZER: They moved all of their operations to the
6 southern parcel.

7 CHAIRMAN ROBERTI: Because the northern site was just
8 left dormant?

9 DR. KIZER: It was left dormant until 1954, when the
10 State purchased the right-of-way, and in 1954, they bought the 28
11 acres that separated the two parcels and separated them at that
12 time.

13 The ownership requirements were such that those 28 acres
14 were not usable. The land north of that has been used for a
15 variety of things since then. There's a wrecking yard on it now;
16 there's an asphalt recycling plant, I guess you call it. There
17 is a parking lot for garbage trucks. There's a number of things
18 like that, and over all a blighted area.

19 CHAIRMAN ROBERTI: So, you're saying that a major
20 consideration in your asking that EPA take the northern site off
21 the NPL was that you can do it quicker?

22 DR. KIZER: We think we can do it a lot quicker. We
23 think we can do it every bit as safely if not more safely. And I
24 think it has other benefits that we have to be cognizant of in
25 the big picture.

26 CHAIRMAN ROBERTI: The reason why you couldn't do the
27 southern site quicker is because of what? Too much money?

28

1 DR. KIZER: It's a huge site. There's a tremendous
2 amount of volume there. We anticipate that that will be a very
3 expensive cleanup, and it will take a long time to clean up.

4 MR. BELLAMO: The level of attention that's going to be
5 directed at a site that received 300 million gallons of chemical
6 waste, which is the other parcel, is going to require remedial
7 investigation that will take at least two and a half years to
8 complete. So even before you begin to clean it up, you'll have
9 to study it for that length of time.

10 CHAIRMAN ROBERTI: How many dump sites are there in
11 Southern California, in your area, that would be less expensive,
12 or have less quantitative municipal fill than the northern site?

13 MR. BELLAMO: I think that you will find comparable
14 landfills in the order of several hundred. I know there's about
15 a hundred in L.A. County.

16 CHAIRMAN ROBERTI: Are any of those on the NPL?

17 MR. BELLAMO: No, nor will they be proposed for the NPL.

18 CHAIRMAN ROBERTI: Are you saying that if you isolated
19 the northern site by itself, there is no comparable sites on the
20 NPL?

21 MR. BELLAMO: Absolutely not.

22 DR. KIZER: And I think EPA has said on a number of
23 occasions that the site would not rank for inclusion on the NPL
24 list. It's not considered material for the Superfund if it were
25 considered by itself.

26 CHAIRMAN ROBERTI: So, the issue is whether it should be
27 considered by itself or not. That is an issue which, I guess,
28 we'll pursue through other witnesses.

1 Any questions from the members of the Committee?

2 Senator Mello.

3 SENATOR MELLO: Dr. Kizer, I'm just going to try to give
4 you some impressions of what I had when I read the article in the
5 San Jose Mercury the day after we had your confirmation.

6 I first wondered why our own staff didn't come up with
7 this kind of information and the allegations set forth there.

8 In hearing the testimony, I have a hard time reconciling
9 the fact that the article strongly alleged that owners of this
10 site which contributed this large sum of money to the Governor's
11 campaign, approximately \$20,000, and the Director of Health
12 Services made several trips to Washington to talk to the EPA to
13 try to take this site, this north site, off of the Superfund
14 list.

15 And to me, the story came through very strong with these
16 allegations. And as I hear your testimony here today, I'm still
17 having a hard time trying to penetrate your testimony and put all
18 the pieces together.

19 First you say that you were not aware of the
20 contribution until after the hearing, and I think that's
21 certainly believable, because if there was a scheme out there, no
22 one's going to probably go out and say: Well, these people
23 contributed heavily, so therefore we want to help them out.

24 DR. KIZER: May I just make one quick comment on that,
25 Senator.

26 SENATOR MELLO: Yes.

27

28

1 DR. KIZER: It's interesting that those reporters did
2 not ask me about whether I knew about the contribution until the
3 following day, after they had written their story.

4 SENATOR MELLO: So, I'm saying I believe you when you
5 say you didn't know about the contribution.

6 What is hard for me to understand at this point, you
7 sort of downplay the importance of this site, the north parcel,
8 in that there's several hundred or more of these types of sites
9 throughout the State of California. Yet, you took it upon
10 yourself -- I'm trying to figure out who were the accomplices
11 that sort of urged you to go ahead and take a leadership role and
12 not allow underlings to meet with EPA.

13 And I can't visualize how you downplay the importance of
14 this site, because if it is not a Superfund type of list, then
15 why not do the same thing for the other several hundred sites
16 that are around the state in this same category?

17 And the third point is the letter from the EPA, dated
18 February 10th, signed by Judith Ayres, that lists the methane and
19 the cancer causing chemical in the total landfill site. But in
20 the north area, it lists four categories: toluene in the soil;
21 pentachlorophenol, lead, dichlorobenzene, and then they go on to
22 say that EPA and the Department of Health Services share a
23 commitment to remedying the environmental and public health
24 threats posed by this Superfund site.

25 They're still saying, based on this letter, that it
26 truly is a Superfund site, and:
27
28

1 "I look forward to discussing
2 our progress with you when we
3 meet next week."

4 It's hard to put everything together here, and --

5 DR. KIZER: There's a number of things there --

6 SENATOR MELLO: -- and what I've heard in your testimony
7 is that here you want -- I guess there's a lot of owners of
8 property in the State of California that would hope or wish that
9 you would do the same thing for them and go through that effort
10 to try to relieve their property from the Superfund designation
11 in order to have more flexibility in developing it.

12 Why aren't we doing more? Why aren't we really going
13 out and doing more? If this is not in a more serious category,
14 why are we putting such an effort to get it off of the Superfund
15 list? That's what I'm having a hard time coping with.

16 DR. KIZER: Let me -- I'll try to remember all your
17 questions here.

18 Point as to why did I personally do this, I did it
19 solely because EPA said they were not comfortable with my staff,
20 who they had already met with. They wanted, and there are other
21 members here who participated in that conference call, in which
22 they said they wanted someone at a higher level, even though John
23 Ramey is my Chief of Staff and the number three person in the
24 Department, they felt that he was not in a position to truly
25 represent the State's position. They wanted someone who could
26 represent the State's position.

27
28

1 The sole reason that I went back to Washington on
2 January 7th was pursuant to their request, and also I was needed
3 to go to CDC to take care of some things related to other
4 activities, and so I combined the two things on the same trip.

5 SENATOR MELLO: Does that imply that EPA was really
6 leading the fight in trying to get this site --

7 DR. KIZER: There has been a long -- for many months a
8 controversy between the EPA staff and the Department and several
9 other State agencies on this. They have to make a decision about
10 it, and basically this was an attempt to resolve that. And
11 indeed, subsequent to the meeting, although I didn't get a copy,
12 I know that Dr. Porter did send a letter out to some of the
13 participants at that meeting acknowledging that this was a
14 helpful meeting for them in trying to make up or give them --
15 have them weigh the benefits or not of including it on the site.

16 Indeed, as I said earlier, this is a unique position
17 from their perspective because they've never considered a site in
18 which there was a clean separation between the parts of the land
19 by either a man-made or a natural barrier, in this case a freeway
20 that separates the two parcels. As was explained to me, this
21 represents a significant policy decision for them as to how they
22 will treat such sites, and there may be others in the future.

23 Now, with regard to the Judith Ayres' letter, I believe
24 it was, what, February 10?

25 SENATOR MELLO: February 10th of '86.

26 DR. KIZER: She references a number of compounds there,
27 and she unfortunately has not responded to a letter that was sent
28

1 immediately after I received that asking for some clarification
2 on those points, because I think her letter raises more questions
3 than it answers.

4 We were aware of those concentrations of compounds, and
5 as I have said already, we believe that concentrations of
6 chemicals such as that may be found on any municipal landfill in
7 which there have been paint cans, and solvent cans, and a number
8 of other things that deposit with the municipal refuse. So, that
9 is not surprising to us that those would be there.

10 Now, in her concluding paragraph about referencing this
11 as "this Superfund site", I asked her specifically about that,
12 and she has not responded to that because, in a letter dated
13 about the same time from Win Porter, Dr. Porter at EPA
14 headquarters, he specifically states that a decision has not been
15 made as to whether this is or will be a Superfund site or not.

16 So, it's a little confusing. On one hand, Judith Ayres
17 is saying it is a Superfund site; however, the headquarters that
18 will make the decision is saying they have not made a decision
19 whether it is a Superfund site or not.

20 Angelo may have some further points on the chemicals
21 there.

22 SENATOR MELLO: Let me pursue that point.

23 The questions, your position is you want to take it away
24 from Superfund listing and do it under State control, as I
25 understand it, on the north parcel?

26 DR. KIZER: We feel that the whole dump site on the
27 northern parcel can be cleaned up a lot more quickly if it's not
28 on the Superfund.

1 SENATOR MELLO: How much money's available from the
2 State then? It would have to be totally funded by the State.

3 DR. KIZER: No, this cleanup would be totally funded by
4 private funds, and that's the other advantage to it.

5 MR. BELLOMO: But in addition to the private funds that
6 would fund the cleanup, we would derive about 5 or 6 million
7 dollars to feed back into the other site.

8 DR. KIZER: The total cleanup would be done as part of
9 the development process, so there would be no taxpayer monies
10 spent cleaning it up.

11 SENATOR MELLO: What would be the scenario if we allowed
12 the Superfunding mechanism to clean up the site?

13 DR. KIZER: They have said that they would want to study
14 it for at least three more years. Again, if we just look at the
15 track record of cleaning up Superfund sites, I think in the
16 entire history of EPA they've cleaned up 6 sites, and I think one
17 of those is about to be put back on the Superfund now.

18 We just don't see this happening in an expeditious
19 manner if it's put on the Superfund, and we don't see a reason
20 why we should delay cleaning up this mess that's there in that
21 corner of the land when we have private funds that can do it,
22 when it can be done quickly because of a variety of influences at
23 play here. Why not do the work and get it done and clean up this
24 area? I mean, heaven knows we have enough sites to clean up.

25 SENATOR MELLO: What type of an agreement do we have
26 with the owners of the land to commit themselves to this funding,
27 and what are the benefits to be gained by them to pay for this
28 cleanup themselves totally?

1 DR. KIZER: Let me defer part of that to Mr. de Llamas,
2 who is the City Manager of Monterey Park, and is perhaps more
3 knowledgeable about some of the specifics of the agreement with
4 them.

5 But basically their agreement is that as part of their
6 developement, they will clean up the old dump there, and it will
7 be done with their funds.

8 SENATOR MELLO: In exchange for what? Are they going to
9 get higher density zoning for housing?

10 DR. KIZER: I don't believe those things apply, but Mr.
11 de Llamas could respond to those specific things.

12 CHAIRMAN ROBERTI: Mr. de Llamas.

13 MR. DE LLAMAS: I'm Lloyd de Llamas, City Manager of
14 Monterey Park. I'm here at the request of Mayor Rudy Peralta,
15 who apologizes for not being able to make it personally this
16 afternoon.

17 I'm here because it is felt that the State Department of
18 Health Services, and specifically Dr. Kizer, are probably
19 unfairly being maligned on an issue that's occurring in our
20 community, but also we're here because we feel that a very good
21 project that could have a tremendous amount of benefits to our
22 community and the communities surrounding us is being lost
23 because of this issue.

24 I think it would be very helpful if you would give me
25 five minutes to visually show you the project, and I think that
26 many of your questions will fall in place and be put in
27 perspective.
28

1 I do have a couple of aerial photos to show. And we'll
2 show you the 45 acres, and --

3 SENATOR MELLO: Well, I was asking a question. Are you
4 going to answer my question?

5 CHAIRMAN ROBERTI: I think that might be good, but let
6 us get to the questions, and then at some point maybe we can see
7 that, too.

8 MR. DE LLAMAS: All right.

9 The question is, how does the developer benefit?

10 SENATOR MELLO: The question is: I haven't found this
11 kind of an angel, yet according to what I hear, somebody's going
12 to allow the sale and the value of the land, and put all that
13 money into cleaning up the site.

14 What I want to know, number one, what kind of a signed
15 agreement or negotiated agreement do you have so the owner will
16 fulfill that?

17 Secondly, what does the owner get in return for spending
18 all this money on this site?

19 MR. DE LLAMAS: We have two issues going. One, you have
20 the court action that's the result of the legal action taken by
21 the State Department of Health Services, the South Coast Air
22 Quality Management District, Regional Water Quality Control
23 Board, County Health Services, and the Solid Waste Management
24 Board.

25 Because of those multi-agency suits, the L.A. Superior
26 Court has authorized the sale of the north 45 acres, which as has
27 been said is a separate parcel, to a private developer, which is
28

1 Trans Pacific Development Corporation, provided that the proceeds
2 of that sale go into a trust, that \$7.2 million go into trust,
3 towards the clean up of the 135 acres that everyone has always
4 considered to be the dump until EPA got involved in this issue.

5 SENATOR DOOLITTLE: Excuse me.

6 Is that the southern site?

7 MR. DE LLAMAS: This is the southern site, and I've got
8 an aerial which shows it easier.

9 Secondly, the City and the developer have already -- a
10 financial package, together with Cal Trans, to put in an
11 interchange and an extension of Greenwood Avenue. And that
12 financing consists of \$4.6 million of Monterey Park Redevelopment
13 Agency money; \$4.6 million of developer money; \$1.1 million in
14 Cal Trans funds State Transportation Improvement Program because
15 this has been planned for a number of years; and Federal Highway
16 Administration money of \$2.3 million.

17 That enables us to provide access to the property. And
18 while that construction is going on, it becomes a Cal Trans
19 project, even though the funding is coming from a number of
20 sources. While the construction of the interchange is going on,
21 the remaining landfill, which is about 6 acres in the 45 acres,
22 would be excavated and cleaned up.

23 So, you're getting \$7.2 million private contributions
24 for the cleanup of the real landfill, the 130 acres south of the
25 Pomona Freeway --

26 SENATOR MELLO: Is that south and north or just south?

27 MR. DE LLAMAS: Just south.
28

1 You're cleaning up an old municipal dump that was
2 operated from December of 1948 to February of 1952, and which was
3 almost totally excavated by Cal Trans when they put the Pomona
4 Freeway in in 1964, except for a 6 acre site. You're getting
5 that cleaned up.

6 SENATOR MELLO: That's the north site?

7 MR. DE LLAMAS: Right.

8 SENATOR DOOLITTLE: May I ask a point on that?

9 CHAIRMAN ROBERTI: Senator Doolittle.

10 SENATOR DOOLITTLE: How much money is going to be
11 involved in cleaning up that north site?

12 MR. DE LLAMAS: Our \$12.6 million project includes
13 excavation of the trash as part of the construction of the
14 interchange.

15 SENATOR DOOLITTLE: And that will completely take care
16 of the north site?

17 MR. DE LLAMAS: That and whatever the developer does on
18 his property. Remember, this 45 acre parcel, there's only a 6
19 acre corner that still contains any refuse.

20 As I said, Cal Trans excavated most of that old
21 municipal dump back in 1964.

22 SENATOR DOOLITTLE: Thank you.

23 MR. DE LLAMAS: So, the developer in return now gets a
24 45 acre developable parcel. The City gets, from that standpoint,
25 the City gets a number of things. The City gets to -- gets
26 private money involved in cleanup of a dump which has been a
27 source of considerable complaints and problems in our community
28

1 for a number of years. It cleans up the old municipal dump. It
2 clears a considerable blight, and this is the redevelopment
3 project, and that 45 acres meets every definition of blight in
4 the Health and Safety Code. It cleans up that blight. It
5 creates 3,000 new jobs, and it provides a bedroom community with
6 about a million dollars a year in sales tax revenues.

7 So, it's a win-win-win situation for everybody, and so
8 that's how the funding is happening, and that's why it makes it
9 unique because what you're really doing is, you're cleaning up
10 dumps using a combination of private money plus you're taking
11 care of a problem by combining it with some other projects that
12 are of benefit to the community.

13 SENATOR CRAVEN: Mr. Chairman, may I respectfully
14 suggest that the points which we have regurgitated here at least
15 three times, at least three times, be laid to rest and go on to
16 some new points?

17 What we have heard from the doctor, from his assistant,
18 and from the City Manager have been established time, and time,
19 and time again. We're just saying the same thing over and over
20 again.

21 SENATOR KEENE: Mr. Chairman --

22 CHAIRMAN ROBERTI: I think that we've really only heard
23 the proponent's position in some questions in trying to
24 understand what the fact situation is. And if there is
25 opposition, I don't think they've had a chance to articulate the
26 other point of view, should there be one.

27 SENATOR CRAVEN: Why don't we take the opposition then?
28

1 CHAIRMAN ROBERTI: Well, for starters, is there anybody
2 in the audience who wants to voluntarily either support or oppose
3 or speak to the confirmation?

4 SENATOR MELLO: Are we going to preclude members from
5 asking --

6 CHAIRMAN ROBERTI: We'll get to the members because the
7 members are going to be here a little longer.

8 SENATOR CRAVEN: There's a lady.

9 MS. CHEN: I do have some concern. I would like to have
10 at least a moment.

11 CHAIRMAN ROBERTI: Please come forward.

12 Is there anybody else? Please come forward.

13 FROM THE AUDIENCE: I would like to speak but on another
14 issue.

15 CHAIRMAN ROBERTI: On another issue other than the
16 Operating Industries question?

17 FROM THE AUDIENCE: Yes.

18 CHAIRMAN ROBERTI: Then why don't you wait that out,
19 because we'll get to that one, too.

20 MS. CHEN: Good afternoon.

21 CHAIRMAN ROBERTI: Please identify yourself.

22 MS. CHEN: Thank you for allowing me to speak.

23 My name is Lily Chen. I am a member of the Monterey
24 Park City Council.

25 I'm here this afternoon not as an official
26 representative of the City, but rather as a long time resident of
27 our community and a mother.
28

1 We have had a long experience with the Department of
2 Health Services. They've been forcing us and forcing me, along
3 with many of my neighbors, to be very concerned about this
4 particular appointment as the head of the State Department of
5 Health Services.

6 Our community has been forced to endure the noxious
7 odors and the unknown health hazards caused by the Monterey Park
8 landfill for many years. These are years when the landfill was
9 under the Department of Health Services' jurisdiction, and during
10 this time our efforts to get the Department's cooperation were
11 matched with unresponsiveness, disinterest, stalling, and
12 occasionally probably even withholding of information.

13 I came to Sacramento today to appear before you because
14 as a mother, as a resident of Monterey Park, I have a question
15 that must be raised. That question is: If you confirm Dr.
16 Kizer's appointment to head the State Department of Health
17 Services, what will Dr. Kizer's first priority be? Would it be
18 health, or would it be real estate profits?

19 I do want to thank you for allowing me to represent my
20 views. I am confident that your decision will be for the
21 interests of all residents in the State of California.

22 Thank you.

23 CHAIRMAN ROBERTI: Thank you, Councilwoman.

24 One moment, please.

25 Senator Doolittle.

26 SENATOR DOOLITTLE: Mr. Chairman, I really think in
27 light of what we've heard that I must object to the inference of
28 the last witness here.

1 This apparently, from the testimony we've had, but for
2 the sale of this property, neither parcel would be cleaned up in
3 the foreseeable future.

4 How long has this Superfund been in existence, Dr.
5 Kizer, to your knowledge? How many years?

6 DR. KIZER: Fifteen years. The Superfund, I guess,
7 about six years.

8 SENATOR DOOLITTLE: Okay, six years, and in six years,
9 six sites have been cleaned up in the whole country?

10 MR. BELLOMO: Only those that have been placed on that
11 list.

12 SENATOR DOOLITTLE: On that list, okay.

13 So, here we have an arrangement that is going to clean
14 up not only the northern parcel, but result in the cleanup of the
15 southern parcel, which is the true hazardous waste site.

16 I fail to find any substantiation of the charge in those
17 articles that there was some under-the-table deal benefitting
18 some of the Governor's contributors. And I just think the
19 testimony of the last witness falling where it did needs some
20 response.

21 DR. KIZER: Actually, I think the response is that it
22 should be viewed as supportive of what we're doing, because we're
23 trying to do something to make it better.

24 And I can't speak historically as to what may have
25 happened on this site, but it seems here we are in a situation
26 where we can do something. We are going to have funds in which
27 we can take care of the odors; we can help remediate the southern
28 site.

1 If anything, I guess I would view her comments as
2 supporting the fact that the Department is indeed trying to do
3 something --

4 CHAIRMAN ROBERTI: How long has the Department had
5 jurisdiction over the sites?

6 MR. BELLOMO: About the latter part of 1983 is when the
7 Department became involved. Our jurisdiction was there sometime
8 prior to 1983 but really imposed.

9 CHAIRMAN ROBERTI: I do think one of her complaints, and
10 she's not here right now but you could address it, is that the
11 Department did not move with any speed.

12 MR. BELLOMO: Speaking to the time before.

13 CHAIRMAN ROBERTI: When it was under its jurisdiction.

14 MR. BELLOMO: Senator Roberti, speaking to the time
15 before 1983, I think the comments that were given were quite
16 appropriate. There were a number of agencies involved; none of
17 them were moving in the same direction. And there is justifiable
18 comment about the lack of coordination and leadership prior to
19 1983.

20 CHAIRMAN ROBERTI: Thank you.

21 Are there any others, members of the audience, who would
22 like to volunteer a position either in support or opposition to
23 Dr. Kizer's appointment if it takes specific reference to
24 Operating Industries questions? The one gentleman wants to speak
25 to another issue, but I just think it's appropriate that we wait
26 on that.

27 We will now have more questions from the Committee.
28

1 Senator Mello, are you finished?

2 SENATOR MELLO: No, I wasn't finished.

3 I think Senator Craven, I guess, was trying to preclude
4 further questions, but I think the line of questions -- I did not
5 hear this before because it was not apparent. The information
6 that came out came out after our last hearing.

7 SENATOR CRAVEN: I'm not suggesting that you heard this
8 before today. I'm suggesting only --

9 SENATOR MELLO: Well, you said --

10 SENATOR CRAVEN: I'm saying only that you've heard it
11 three times today.

12 SENATOR MELLO: Not the questions I'm asking, Senator.

13 SENATOR CRAVEN: Well then, you haven't asked one yet
14 that I haven't heard before.

15 SENATOR MELLO: Well, I'd like to, with the permission
16 of the Chair, like to get the City Manager back up here again. I
17 just have a few more additional questions.

18 What I'm trying to find out is, is there a windfall
19 accruing for the owners of the property as a result of the
20 transactions made here? I want to build a scenario as to the
21 efforts of Dr. Kizer and others.

22 As I understand, the City's contributing \$7.2 million
23 from the sale of this property, and that's the north area, to
24 clean up the whole site, in return you'll get an interchange of
25 which you'll put 4.6 million, the redevelopment bonds will put
26 4.6 million, and Cal Trans will put in 1.45 million, whatever it
27 is. So he gets an interchange, which according to the President
28

1 of Cal Trans is truly their responsibility because they're not
2 building interchanges any more. It's the responsibility of the
3 developer.

4 The point I was getting at when Senator Craven spoke up
5 is, you said he's going to get to develop a piece of property.

6 My question is: What is the general plan in the zoning
7 currently on the property, and what commitments have the City
8 made to rezone the property for its ultimate use once it's
9 cleaned up?

10 MR. DE LLAMAS: The current zoning is for manufacturing,
11 and we would approve the plan under a conditional use in a
12 redevelopment plan because it is in a redevelopment area. And we
13 have a -- we have a plan that we have tentatively agreed on and
14 approve, which is a regional auto center, a small retail center,
15 and a substantial amount of office space.

16 SENATOR MELLO: In your opinion, what do you think will
17 be the value of the total developable property once it's cleaned
18 up?

19 MR. DE LLAMAS: Once he's developed with all the
20 buildings on it, probably about 80 million.

21 SENATOR MELLO: So, then, for what appears to be a very
22 generous \$7 million contribution, plus 4 for the interchange, 11
23 million, he's going to -- You see, Senator Craven, I didn't hear
24 any of this before.

25 SENATOR CRAVEN: That has not been discussed.
26
27
28

1 SENATOR MELLO: So, for about 11 million of his own
2 money, he's going to then receive an entitlement for use of
3 property that under its present condition would be undevelopable.

4 MR. DE LLAMAS: Right.

5 SENATOR MELLO: At all.

6 MR. DE LLAMAS: Has no value.

7 SENATOR MELLO: Has no value, okay, so for 11 million,
8 then, he's going to accumulate an entitlement that's worth in
9 your opinion about 80 million?

10 MR. DE LLAMAS: He has to spend in addition to that
11 because, in addition to the interchange, then he has to go and
12 develop the 45 acres himself, and he has about \$3 million worth
13 of costs on the 45 acres to bring it under development.

14 SENATOR MELLO: That'll raise his investment. So, he's
15 no longer an angel as I thought he was.

16 MR. DE LLAMAS: No, it's straight -- it's a
17 redevelopment project primarily.

18 SENATOR MELLO: I'm not complaining, because it's going
19 to have some benefit jobs and all that, but I just want, for the
20 record, to show that this so-called generosity that I was
21 thinking existed is really proper, on the developer's part.

22 So there was, based on that, there was a great interest
23 then on the part of the developer to somehow get this property
24 away from the Superfund and get this arrangement on the tables so
25 he can proceed with the development of his property.

26 SENATOR CRAVEN: May I just interject.

27

28

1 Or you, of course, could take the alternative and hold
2 out, put it in the Superfund and wait for 30 years, wherein the
3 situation which Mrs. Chen and others obviously feel is an
4 abhorrent situation, continues to exist, perhaps exacerbate.

5 I don't say that it's necessarily a quid pro quo, but I
6 don't find it anything unusual from a standpoint of land
7 ownership to devote a certain percentage of the sale to taking
8 care of the problem, and then reap the benefits of what may
9 accrue. The beneficial aspect of it falls in two ways: to the
10 property owner, obviously, and I don't find anything unusual
11 about that, but certainly to the people as well.

12 SENATOR MELLO: Senator Craven, I'm just trying to find
13 out for the first time that --

14 SENATOR CRAVEN: Well, you didn't use the term altruist,
15 but you kind of insinuated, you know, that he was being Charley
16 Goodguy and doing all this out of the goodness of his heart. I
17 never had that feeling, frankly.

18 SENATOR MELLO: Based --

19 SENATOR CRAVEN: Very few businessmen do things out of
20 the goodness of their hearts. They're in business to make money.

21 SENATOR MELLO: Based on the testimony, Dr. Kizer never
22 did say, you know, on the record that this type of arrangement
23 would develop this kind of material gain. That's why.

24 There's nothing wrong with it; I'd like to do the same
25 thing. But I just wanted to pursue it so that, as you point out,
26 the whole package turns out to be very beneficial for them.

27
28

1 If he didn't get it off the list and had a deal with
2 Superfund, he'd be delayed some great number of years. It was to
3 his benefit to have this arrangement expedited.

4 DR. KIZER: Could I just make one comment here?

5 Actually I'm hearing for the first time today, too, what
6 the benefits would be to the developer as far as the overall
7 value of that development project.

8 MR. DE LLAMAS: Let me make one additional point related
9 to this.

10 One of the issues that we had with EPA, and I've been
11 involved with all the meetings with EPA, way before Dr. Kizer got
12 involved in this, one of our issues is, we feel that it doesn't
13 become a Superfund site until Congress says it's a Superfund site
14 when it is published in the Federal Register.

15 The San Francisco staff is under the feeling that it
16 becomes a Superfund site when they say it is, and that's the day
17 that the State nominates it.

18 The issue is on the boundaries, and nobody's, as has
19 been said once before, no one's taking issue with 130 acres south
20 of the freeway.

21 SENATOR KEENE: It was published as 190 acres in
22 October, 1984 in the Federal Register. Is that sufficient?

23 MR. DE LLAMAS: Was it? They've never submitted that to
24 us.

25 SENATOR KEENE: You said publication in the
26 Federal Register was when Congress declared it to be a Superfund.

27

28

1 MR. DE LLAMAS: I didn't realize that. EPA has never
2 reduced that?

3 SENATOR CRAVEN: May I, Mr. Chairman?

4 CHAIRMAN ROBERTI: Senator Craven.

5 SENATOR CRAVEN: As a City Manager, you would have
6 certainly a recollection whether this whole milieu appeared as an
7 agenda item before your Council.

8 Has it been discussed by your Council?

9 MR. DE LLAMAS: Yes, we've been working on it since
10 1978.

11 SENATOR CRAVEN: Have you brought it down and fine tuned
12 it, honed it to a point where you voted as to the efficacy of
13 what you have explained?

14 MR. DE LLAMAS: Yes, it's been a four-one vote.

15 SENATOR CRAVEN: You imagine that Mrs. Chen was the one
16 who objected?

17 MR. DE LLAMAS: Yes.

18 SENATOR CRAVEN: Four to one?

19 MR. DE LLAMAS: Uh-huh.

20 SENATOR CRAVEN: All right.

21 Thank you.

22 CHAIRMAN ROBERTI: Senator Petris.

23 SENATOR PETRIS: I'm interested in this litigation.

24 Without going over the whole story, who was suing whom
25 on this? Were all these public agencies filing a law suit to
26 clarify?

27

28

1 MR. BELLOMO: Yes, the suit -- several State and local
2 agencies were consolidated, and we received a Court stipulation
3 from the owners that required that they transfer the proceeds of
4 the sale to the developer into a trust account.

5 SENATOR PETRIS: Now, what was the law suit all about?
6 To compel the sale?

7 MR. BELLOMO: Well, this law suit was that we wanted to
8 search whatever assets were available from this responsible
9 party, the owners. They are very unresponsive to any directive.

10 SENATOR PETRIS: I thought the City owned the property.
11 Wasn't it City-owned property, the municipal dump?

12 MR. DE LLAMAS: That needs to be clarified. The
13 property is currently owned by a corporation that belongs to
14 Operating Industries, who owns the 135 acres on the south side of
15 the freeway.

16 SENATOR PETRIS: How about before that?

17 MR. DE LLAMAS: The property was owned by a man named
18 Saddler, and it was operated as a municipal dump under a
19 contractural arrangement between December of --

20 SENATOR PETRIS: So, it was a municipal dump without the
21 City owning the land?

22 MR. DE LLAMAS: Right.

23 SENATOR PETRIS: Okay, now --

24 SENATOR DOOLITTLE: We're talking about the northern
25 parcel that was the municipal dump.

26 SENATOR PETRIS: Now, the developer you mentioned, Trans
27 Pacific, when did they get into the picture? Is that the buyer
28

1 as a result of the Court order? Are they the ones that are going
2 to buy it?

3 MR. DE LLAMAS: Right. They got involved in December of
4 '84. At that time the City of Monterey Park had gone through the
5 environmental impact reports on the project. They had more or
6 less put a package together and were now seeking developers.
7 Trans Pacific was one of the developers that was referred to us.
8 We were working with four developers at the time, and it was
9 finally nailed down to them.

10 SENATOR PETRIS: Where are they from?

11 MR. DE LLAMAS: They're from Torrance.

12 SENATOR PETRIS: Trans Pacific?

13 MR. DE LLAMAS: Uh-huh.

14 SENATOR PETRIS: They're not an Asian company?

15 MR. DE LLAMAS: No, they are not.

16 SENATOR PETRIS: They have other projects in California?

17 MR. DE LLAMAS: They have projects throughout
18 California, Foster City, in Los Angeles, in Orange County, in San
19 Diego, and in Hawaii.

20 SENATOR PETRIS: Thank you.

21 CHAIRMAN ROBERTI: Senator Torres.

22 SENATOR TORRES: First of all, Mr. Kizer, I resent your
23 comments regarding the two reporters. I've known them for a
24 number of years, and I do not view them as nonindustrious and
25 noncommitted to their profession. And I just wanted to say that
26 at the outset since I know both of them personally.

1 Secondly, there are a lot of things you really don't
2 know about, it seems, that you're not aware of. Perhaps I think
3 it's appropriate that we might go over some of the areas that
4 perhaps you're not even aware of in respect to this situation.

5 The EPA initially put out the full 190 acre site in
6 1984. Were you aware of that?

7 DR. KIZER: I've heard that that was noted, yes.

8 SENATOR TORRES: In October of '84, you were not then
9 Director of Health, were you?

10 DR. KIZER: That is correct.

11 SENATOR TORRES: Let me give you a little history, then.

12 In October of '84, the EPA put up the entire site for
13 proposal into the Superfund list. And as is the custom with the
14 Environmental Protection Agency, and I know most of the
15 information not because I'm an avid reader of federal documents
16 but simply because we were privileged to hire an enforcement
17 attorney with the EPA to our staff here in Sacramento. And it is
18 the custom for the EPA to issue proposed lists, which is the
19 first part of the process, and allow for three months for
20 agencies to respond: yea, nay, objections, support, et cetera.

21 In 1984, the Department of Health Services and the State
22 of California did not respond at all during that three-month
23 period regarding the proposed entire site.

24 Thereafter, you indicate that there were meetings going
25 on between you and the EPA, and the EPA was -- it was at their
26 request for you to come to Washington.

27
28

1 In that January meeting, January 6th, I believe, in
2 Washington, who else was in the room with you?

3 DR. KIZER: Well actually, let me give you a list of who
4 was at that meeting. It was January 7th, I believe.

5 SENATOR TORRES: Yes, I was in error, January 7th.

6 Was the developer at that meeting?

7 DR. KIZER: I believe there were some consultants there.

8 SENATOR TORRES: From Trans Pacific Development?

9 DR. KIZER: There was a representative, yes.

10 SENATOR TORRES: Was the Operating Industries
11 representative at that meeting?

12 DR. KIZER: Not that I'm aware of.

13 SENATOR TORRES: Was the Governor's Office present at
14 that meeting?

15 DR. KIZER: Well, there was a representative from the
16 State, Cindy Taliano.

17 SENATOR TORRES: From the State?

18 DR. KIZER: That's correct.

19 SENATOR TORRES: What do you mean from the State?

20 DR. KIZER: Cindy Taliano, I guess, would be viewed as
21 working in the Governor's Office in Washington, yes.

22 SENATOR TORRES: She was representing the Governor's
23 Office?

24 DR. KIZER: She was basically chauffeuring me around.

25 SENATOR TORRES: She was chauffeuring you around.

26 DR. KIZER: That may not be the correct word, but she
27 was -- I was unfamiliar with Washington, where EPA was, and she
28 provided me with transportation to that.

1 SENATOR TORRES: Is that available to Legislators as
2 well since it's a State office, to have a chauffeur? Usually we
3 take cabs or the bus when we're in Washington.

4 DR. KIZER: We did take a cab.

5 SENATOR TORRES: Isn't it true, though --

6 CHAIRMAN ROBERTI: Prop. 24 closed our office.

7 SENATOR TORRES: That's right.

8 Isn't it true that Mr. Warner, Thomas Warner who was the
9 legal counsel for the Department of the Health and Welfare
10 agency, wasn't he the one that talked in November, and had
11 meetings with representatives from Cranston and Wilson's staffs
12 to try and arrange a meeting with EPA regarding this site?

13 DR. KIZER: I don't know exactly what conversations or
14 meetings Mr. Warner may have had, no.

15 SENATOR TORRES: So you don't talk to Mr. Warner then?

16 DR. KIZER: As I've already said, I have talked with
17 Mr. Warner.

18 SENATOR TORRES: But you were not aware of any of his
19 activities regarding setting up any meetings between the EPA and
20 the State Department of Health Services?

21 DR. KIZER: I'm aware that he had some discussions. I'm
22 unaware insofar as his setting up those meetings.

23 SENATOR TORRES: Mr. Bellomo and Mr. Kizer, you have
24 also indicated that, on the north site, there really weren't any
25 -- there was no dumping occurring, according to you, and if there
26 were, that you really have no knowledge of it.

27 Is that a correct statement?
28

1 DR. KIZER: At what time period?

2 SENATOR TORRES: Since 1952, I believe was your
3 testimony.

4 DR. KIZER: That was what I said, yes.

5 SENATOR TORRES: Are you familiar with a document that's
6 been issued by the U.S. Department of Commerce? It's a very
7 interesting document because it highlights who actually dumped in
8 that site. And you may not know this information, and I'd like
9 to share it with you.

10 It said during that study, which was made in 1979 by the
11 U.S. House of Representatives Congress Committee, in which the
12 waste producers themselves, not the owners of Operating
13 Industries, said that they dumped on that north site hazardous
14 materials, such as PCE, arsenic, and selenium. And they've
15 dumped them prior to 1976.

16 And in a report by the Water Regional Board, which we
17 were made privy of, which was dated -- it goes on to tell us
18 exactly that during that same period of time, they issued a
19 report, and this was dated before the California Regional Water
20 Control Board, this is the Los Angeles Regional Water Quality
21 Control Board, indicated that Operating Industries, quote:

22 "... has offered to eliminate
23 further disposal of wastes in
24 the entire 45 acre area north of
25 the Pomona Freeway and an additional
26 15 acre area south of the freeway."
27
28

1 This would limit the landfill operations to 130 acre
2 area south of the freeway.

3 So, it's really not correct, Dr. Kizer, for you to tell
4 this Committee that dumping was not going on in that north area
5 when, in fact, it was according to two separate State and federal
6 reports.

7 And the relevance of that is --

8 DR. KIZER: Can we just --

9 SENATOR TORRES: I'm answering my own questions, just
10 like you did.

11 When all the studies have been done, there have been
12 four studies done on that site. And those studies have been the
13 Modal Study, which talked about soil stability; we also had
14 another study which dealt with the whole issue of hazardous
15 wastes in the area.

16 Yet none of those studies really concentrated on the
17 entire parcel itself, and so it's very unclear to us, when I
18 asked myself the question, is it really safe?

19 No one can really say for sure. But it's coincidental
20 that that entire acre site, that north acre site, was part of a
21 whole proposal before the EPA prior to your arrival, and we must
22 note that, all of a sudden we don't know also that -- and maybe
23 you don't know this either -- that Trans Pacific had been talking
24 with the EPA in '84 and in '85. And the EPA told Trans Pacific
25 Development, and they were only incorporated as a company in
26 October of '85. And something you may not know also, they've
27 only made one contribution throughout their life as a
28

1 corporation, and it was made on May 30th of 1985 to a man by the
2 name of George Deukmejian for Governor for the amount of \$2,000.

3 During that period of time, they were discussing with
4 EPA, EPA told them: It's going to cost you at least \$3-400,000
5 to do a site study to make sure that everything is safe on that
6 parcel of land. They never heard from Trans Pacific again.

7 And all of a sudden we hear that this north parcel is no
8 longer part of the entire parcel.

9 I'm not alleging that you did anything wrong, because I
10 don't know what you did. But I'm trying to bring information to
11 your lights so that you're more able and aware of what
12 information we do have so we can share this information with each
13 other in making decisions affecting the policy and health and
14 safety of Californians.

15 Now, I have a conflict in respect to this dump. My
16 parents live near the area, and I have grown up around that area.
17 And I've seen the dump throughout its various stages. I was born
18 in '46 and lived around that area for most of my life until I was
19 married. And during that whole period, it's been a real sore
20 spot for that community.

21 And I really don't think it's fair for you to come
22 before this Committee and say that: If you just let us do what
23 we want to do, we're going to get it cleaned up for you real
24 fast; but if you let the federal government take over, it's going
25 to take years before it's cleaned up.

26 I don't think it's fair to tell the people that, because
27 I don't think it's fair for us to make any decision regarding any
28

1 proposal until we have a concentrated study which to date has not
2 been done on that north parcel area.

3 And when we begin to look at all that's happened, yes,
4 maybe it was coincidence that the developer's consultants were
5 there at the meeting with you. Maybe it was coincidence that
6 contributions were made. Maybe it was coincidence that the only
7 contribution that Trans Pacific Development, who had an interest
8 in developing this property, made only one contribution,
9 according to our records, and it happened to be to the Governor
10 of the State of California. Maybe all that is coincidental.

11 But it goes back to the very basic essence of what we
12 have been debating with your representatives in Benecia, with
13 your representatives throughout the State. And that is people
14 don't have confidence in government to clean up the messes that
15 are there.

16 My question to you is: Where is there a report that
17 tells us exactly what is on that north parcel site? Because when
18 you say bedrock, most reports that I've seen indicate that
19 bedrock is really sandstone. Most things I learned were that
20 sand is porous.

21 Isn't it possible that some of those elements, which you
22 may not even know about and I don't even know about, Mr. Bellomo,
23 who's very competent, may not even know about, because we didn't
24 even know that there was dumping going on there prior to '76.
25 Now we know that there was. We don't know what was dumped there.

26 In your urgency to approve a development project, which
27 I understand creates jobs, et cetera, you really haven't gone
28

1 after to determine just what is there on that site before you
2 start putting asphalt over it, just as we've experienced in many
3 other areas.

4 So, do we have a definitive study somewhere that I'm not
5 aware of, other than the four studies that I'm aware that tell us
6 exactly what's on that north parcel site, and why it's so safe
7 not to be included in the Superfund list?

8 DR. KIZER: Well, I'm not sure that the information
9 which you say that we know is indeed correct. And I think that
10 Angelo would like to make some comments about that.

11 MR. BELLOMO: Senator Torres, I'm still not convinced
12 that we have information that suggests dumping. I am certainly
13 aware of the Eckert list.

14 CHAIRMAN ROBERTI: Dumping after '52.

15 MR. BELLOMO: Well, certainly before '76. Between that
16 interim period.

17 I certainly aware of the Eckert list, and I know the
18 generators reported what they had disposed of at Operating
19 Industries.

20 I don't think there was reference made, although it
21 appears you've got reference that that disposal actually took
22 place on the 45 acre parcel. I do need to look at that.

23 Secondly, there was at one time a proposal by Operating
24 Industries to resume disposal operations on the northern parcel,
25 but that proposal was rejected by the City of Monterey Park.
26 Instead of allowing them to expand back on to the 45 acre parcel,
27 the City authorized that the landfill operators raise the height
28

1 at which they were disposing of waste on the southern portion
2 site.

3 That's the information we have, and if there's other
4 information available that we don't have, we'd like to see it.
5 We need to see it.

6 SENATOR TORRES: Has there been a study of that north
7 area that you are aware of that tells us what's there and what's
8 not there?

9 MR. BELLOMO: Yes.

10 SENATOR TORRES: What report is that, because I've never
11 seen it.

12 MR. BELLOMO: Well, there are several reports referenced
13 --

14 SENATOR TORRES: No, no. I know about the four reports,
15 but they really don't tell us what's on there.

16 MR. BELLOMO: I believe it does, Senator Torres. I
17 believe that the reports tell us clearly that the area that is
18 green, as a result of numerous trenches, each one of those
19 squares up there represents a trench made by a back hoe. And
20 what it shows us is that in those areas that were trenched, the
21 material is actually removed down to the consolidated material or
22 bedrock. There is not even soil at the green area. Trenching
23 confirmed that.

24 SENATOR TORRES: But the trenching only tells us whether
25 migration has occurred; isn't that correct?

26 MR. BELLOMO: No, the trenching is going to tell us what
27 the prior use of this portion was. If during the trenches, for
28

1 example, they encountered chemicals indicating that chemicals had
2 in fact been disposed of on this property, they would certainly
3 be uncovered during the trenching operations.

4 That is not to say that ground water under the Operating
5 Industries site and under this parcel is not contaminated. It's
6 my guess that this entire region is contaminated as a result of
7 Operating Industries contaminating ground water.

8 SENATOR TORRES: Is this the same report that suggests
9 to us that the methane levels are above explosive concentrations
10 in that area?

11 MR. BELLOMO: Yes, but I think what we have to keep in
12 mind on the methane levels is that methane is not an explosive
13 gas, and there is no explosion and hazard until it enters a
14 confined space.

15 We have surveyed sites throughout the Los Angeles area,
16 and the operators of those sites, namely the L.A. County
17 Sanitation Districts and the L.A. City Bureau of Sanitation, and
18 the levels that are referred to in the reports that you cite are
19 comparable to the levels found on any nonhazardous waste disposal
20 refuse site.

21 So that methane gas is generated whether it be at this
22 landfill or in the septic tank that may be in your backyard.
23 Methane gas is commonly generated.

24 SENATOR TORRES: Yes, but no other proposal has a
25 developer that wants to make money off this land, and no other
26 proposal that I have seen of a landfill or a dump has buyers in
27 waiting. No other proposal has had so much interest, however
28

1 coincidental, from the Health and Welfare Agency, from the
2 lobbyists for the Governor, for friends of the Governor, for
3 developers.

4 So, I really don't think it's fair for you to say that
5 it's just like any other site. It really isn't, Angelo.

6 MR. BELLOMO: Well, it's very similar to other hazardous
7 waste disposal sites in terms of its environment -- I'm sorry,
8 refuse disposal sites, in terms of its environmental
9 considerations, which is what I and my staff have been focusing
10 on.

11 SENATOR TORRES: For clean up, yes, but once you put
12 asphalt over this site, once you develop over it, there is no
13 telling what can happen later down the road because we don't
14 really know what's there.

15 MR. BELLOMO: Senator Torres, I think your comment is
16 appropriate when we're talking about contaminated ground water,
17 and the point could be made, again, that ground water under this
18 site, under that site, and in a two-mile radius surround the
19 Operating Industries landfill may well be contaminated. We
20 believe that's the case.

21 But just as in the case of BKK, which all of us know is
22 a very serious hazardous waste disposal site, that site is being
23 mitigated, and EPA has not placed that on the National Priorities
24 List.

25 Now, where is the consistency in not placing the BKK
26 disposal site, and yet maintaining that in order to respond to
27 this, it's got to be placed on the list?
28

1 CHAIRMAN ROBERTI: Could it be that they are treating
2 both sites alike for any number of reasons, but ease of clean up
3 because there's proximity? The two sites are next to each other.
4 It might make sense to include the northern site with the
5 southern site, which I would take it is probably as bad as BKK?

6 MR. BELLOMO: Yes.

7 CHAIRMAN ROBERTI: That may be the reason why the
8 northern site would be included.

9 We will take a five-minute recess, and then Senator
10 Roberti will resume with his questions.

11 (Thereupon a brief recess was taken.)

12 CHAIRMAN ROBERTI: The Committee will reconvene.

13 DR. KIZER: Senator, may I make a couple of requests in
14 clarifying your comments?

15 CHAIRMAN ROBERTI: Yes.

16 DR. KIZER: One, I would like to see -- there's been at
17 least two people who have referenced the notices in the
18 Federal Register which specified that the proposed Superfund
19 listing was to be 190 acres. My staff advised me that in the
20 October, 1984 notice that you referenced, it does not say that
21 the proposed site is 190 acres. I guess we would just like to
22 see that.

23 I guess I'd like to see it to see if my staff are
24 informing me erroneously, and I think both Angelo and Mr. de
25 Llamas made comments on that.

26 Secondly --
27
28

SENATOR TORRES: May I respond to that, Senator, since it's obviously directed to what I said earlier?

CHAIRMAN ROBERTI: Yes.

SENATOR TORRES: I suggest you call the EPA, as we have done. We'd be happy to give you their phone number, and they will indicate to you exactly what they've indicated to us, and that is their position has never changed regarding the entire site.

DR. KIZER: Well again, I guess we have a disagreement here because my staff here and Mr. de Llamas has that notice, and they say that it does not reference the site, the proposed Superfund listing, as 190 acres.

SENATOR TORRES: I'm only relying on an EPA conversation that we have had as of yesterday.

MR. DE LLAMAS Maybe if I could clarify that point.

I do have the notice sent to the City of Monterey Park in October, 1984. And this is addressed to the Honorable David Almada, who was Mayor in October of 1984. It's a press release. It says:

"On Tuesday, October 2nd, 1984, the U.S. Environmental Protection Agency announced its proposed update of the National Priorities Lists of hazardous waste sites eligible for Superfund cleanup under the Comprehensive Environmental Response Compensation Liability Act of 1980."

1 It then goes to talk about some 244 sites on the List, and in the
2 next paragraph it says:

3 "We have prepared the enclosed
4 package to assist you in responding
5 to constituent inquiries on the
6 content and process of the National
7 Priorities List. The package contains
8 the following information: press re-
9 lease, maps of sites, October 2 press
10 conference opening statement, National
11 Priorities List rankings, remedial
12 actions under Superfund description of
13 each National Priorities List site."

14 This is the map. There's nothing on that map that would
15 enable you to tell that both sides of the freeway are being
16 included.

17 This is the description.

18 SENATOR TORRES: That doesn't tell us anything.

19 MR. DE LLAMAS Right.

20 Let me make the point, though.

21 The point is that the notice went out. There was
22 nothing in the notice that would tell us that both sides were
23 being considered, and there is nothing in the notice in any of
24 this package, and we didn't know at the time, that says that we
25 have three months to respond to any questions that we might have.

26 That's the only notice that the City received.

27 CHAIRMAN ROBERTI: Senator Torres.
28

1 SENATOR TORRES: In a very detailed letter to Keith
2 Accata, October 22nd, 1985, by Mr. Bellomo, indicated that the
3 ranking, quote:

4 "The ranking package prepared by this
5 office in November of 1982 mentioned
6 180 acres as the size of the site."

7 So since November of '82, in a ranking prepared by the
8 Department of Health Services -- was that before your tenure here
9 or were you still there?

10 MR. BELLOMO: No, just as I entered.

11 SENATOR TORRES: Just as Mr. Bellomo entered to a great
12 career in the Department of Health Services, 190 acres has been
13 on their minds since 1982.

14 SENATOR DOOLITTLE: Mr. Chairman.

15 CHAIRMAN ROBERTI: Senator Doolittle.

16 SENATOR DOOLITTLE: Is there any written evidence to
17 suggest that this was on the EPA list, as has been alleged, in
18 1984? As a member of the Rules Committee I'd like to know that.

19 It's been alleged. Is there anything to back that up?

20 SENATOR KEENE: We can only verify it with a copy of the
21 Federal Register.

22 SENATOR DOOLITTLE: Can we instruct Rules Committee
23 staff to obtain that, Mr. Chairman?

24 CHAIRMAN ROBERTI: Staff is so instructed, and we're
25 trying to get it.

26 Dr. Kizer had another point.

27 DR. KIZER: Two other points, if I may, sir.
28

1 One is that the statement was made that Mr. Warner
2 arranged that meeting in November, 1985 at EPA headquarters. And
3 Mr. Warner is here, and I think he'd like to comment on that
4 because that is an erroneous statement.

5 And I might also add that he was in Washington, as was
6 Mr. Ramey, for another purpose, and did attend that meeting on
7 the day previous to the planned purpose there in Washington.

8 But as I was told a little bit ago, Congressman Martinez
9 arranged that meeting.

10 SENATOR TORRES: Oh, he did? It was Marty Martinez who
11 arranged the meeting for the developers, and you, and EPA?

12 DR. KIZER: Mr. de Llamas, you may want to comment on
13 that since you just informed me of that.

14 MR. DE LLAMAS Sure.

15 The -- I had a meeting with the San Francisco Regional
16 Office on November 5th, and the developers' attorney and the
17 agency staff were there. We felt that we hit a stone wall when
18 some of these issues that we have just talked about --

19 SENATOR TORRES: A stone wall or a bedrock wall?

20 MR. DE LLAMAS A stone wall.

21 I talked to Congressman Martinez, and he was concerned.
22 And he said he would make time to meet with Jim Barnes, and as a
23 result of that, I also asked to -- I called Mr. Ramey and asked
24 if they could go. And as it happened, they were going to be in
25 Washington anyway and agreed to go along and clarify the State's
26 position.

1 I took a consultant with me, an environmental consultant
2 who did the Environmental Assessments, and also there was a
3 Washington, D.C. attorney who represents the developer.

4 And once again, mainly we met -- we met in the morning
5 with the staff of Senator Wilson, staff of Senator Cranston, and
6 that afternoon we met with Mr. Barnes and a number of EPA
7 officials and mainly outlined our position, our rationale, and
8 why we disagreed with the Regional Office's standing.

9 SENATOR TORRES: There was no role played by Mr. Warner
10 in setting up that meeting?

11 MR. DE LLAMAS No.

12 SENATOR TORRES: I stand corrected.

13 DR. KIZER: If I may make just one additional comment.

14 CHAIRMAN ROBERTI: Yes.

15 DR. KIZER: Mr. Bellomo, I think, would like to make
16 some additional comments. We got sidetracked here in the
17 discussion as to how safe this 45 acre parcel is, and I think
18 that that is a relevant question, and I think Mr. Bellomo would
19 like to respond specifically to Mr. Torres' comments.

20 CHAIRMAN ROBERTI: Right, and then I'll get back to what
21 I was saying before we had the recess because it's related, and
22 that is that Mr. Bellomo, you earlier indicated that this
23 northern site was less serious a problem than, say, BKK.

24 Isn't it conceivable, however, that if you took the
25 whole BKK disposal site, or maybe even Stringfellow, and say:
26 Hey, for purposes of argument, now, the northeast corner isn't
27 nearly as bad as the other 80 percent. You could find a portion
28

1 of either site, the BKK, Stringfellow, they're well-known sites
2 in Southern California, that were less serious, but as part of
3 the cleanup to clean up the whole thing, just because of
4 efficiencies or economies, or because they're contiguous, or had
5 similar ownerships that when a site is designated, the entire
6 site would be included. It might be inefficient to segregate one
7 portion of that site off?

8 MR. BELLOMO: Senator Roberti, I will tell you this,
9 that if BKK, which I consider to be a major problem -- it had 600
10 million gallons of liquids disposed of there, compared to about
11 half of that which went here -- if they had a -- if they owned a
12 piece of property across Azuza Boulevard that at one time had
13 received as a municipal refuse and operated as a municipal refuse
14 dump from, say, 1948 to '52, I would never propose that that site
15 be included on the National Priorities List because it's not
16 contiguous to the BKK site, and because it is to be handled,
17 mitigated, assessed, as a refuse disposal site and not as a
18 hazardous waste site.

19 CHAIRMAN ROBERTI: And there would be no efficiency of
20 cleanup if there was a joint --

21 MR. BELLOMO: No, there would be just the opposite
22 effect.

23 I think one thing that we may have misled people on here
24 is that we do want the Operating Industries landfill to be placed
25 on the National Priorities List. It is such an important site
26 that it's going to require federal resources that we don't have
27 in California. And we're not saying that it's going to take 30
28

1 years to clean that up, because we're going to be pushing for it
2 to be cleaned up much more quickly than that.

3 But in terms of the other site, the 45 acre parcel, it
4 again, it demeans the importance of sites that you place on the
5 National Priorities List to even suggest that that site belongs
6 there.

7 In terms of not having adequate data to move ahead on
8 this development, the reason why we see so many dots up there,
9 particularly in the brown and yellowish areas, is that my
10 department, my staff, insisted on much more samples than the
11 original developer and the proponents had requested. We had put
12 the freeze on this development over a year and a half ago because
13 it was proceeding much quicker than we were comfortable with.

14 As a result, we consolidated the concerns of all the
15 agencies that were involved. We've got the County Health
16 Department, the Air Quality Management District, the City, the
17 Regional Water Quality Control Board, our Department, and the EPA
18 that were active members in deciding what additional work had to
19 be done on that 45 acre parcel to make darn sure we weren't
20 moving ahead and entering something we weren't aware of.

21 So, I've got more than enough information I need to let
22 this excavation take place, and not only that, but we've required
23 that samples be taken not only during the excavation, but
24 following the excavation. Ground penetrating radar will also be
25 accomplished during this period of time.

26 CHAIRMAN ROBERTI: You feel pretty secure you know what
27 has been dumped on the northern site, especially the --
28

1 MR. BELLOMO: I'm sorry, would you repeat that?

2 CHAIRMAN ROBERTI: You feel pretty secure that you know
3 what materials have been deposited on the --

4 MR. BELLOMO: Yes.

5 CHAIRMAN ROBERTI: -- north site, especially the
6 northwest triangle?

7 MR. BELLOMO: We know the types of waste that were
8 disposed of there, and again, I think we will find hazardous
9 constituents.

10 CHAIRMAN ROBERTI: And you feel fairly secure that the
11 disposal stopped in 1952?

12 MR. BELLOMO: Yes.

13 CHAIRMAN ROBERTI: And there was no dumping after 1952?

14 MR. BELLOMO: You know, I'm not going to sign that in
15 blood, but I will tell you that even if disposal operations came
16 up until 1985, my position on placing that site on the National
17 Priorities List would remain the same. And that is that based
18 upon all the sampling and trenching that's been done on that
19 property, we're not dealing with a hazardous waste disposal site;
20 we're dealing with an old municipal landfill which are important.
21 They're not unimportant, but they don't belong on the National
22 Priorities List.

23 SENATOR TORRES: Mr. Chairman.

24 CHAIRMAN ROBERTI: Senator Torres.

25 SENATOR TORRES: Angelo, so you're basing your
26 information on your own Department's studies, not on BCL or the
27 Model study?
28

1 MR. BELLOMO: No, I'm basing it upon all information.
2 In fact, Senator Torres, the only information we have are split
3 samples that we commonly take during --

4 SENATOR TORRES: Well, the BCL studies, of which there
5 were three, indicate to me that they did not meet EPA standards
6 for laboratory requirements, detection levels, or number and
7 placement of monitoring wells. Those three studies that were
8 done. That's why I asked you, because earlier on in your
9 testimony you said that you really didn't know what was there.

10 Now we hear that you really do know what's there, but I
11 want to know how you know what's there. Is it based on these
12 studies, which experts tell me do not meet EPA standards, which I
13 would have some credibility problems with, or are they based upon
14 your studies because you believe the people that are doing the
15 studies, and they've come up with that?

16 Secondly, here is the National Priorities List site
17 regarding the 190 acres being submitted to EPA.

18 DR. KIZER: May we get a copy of that, please?

19 SENATOR TORRES: Sure.

20 CHAIRMAN ROBERTI: Sergeant, give Dr. Kizer a copy.

21 SENATOR KEENE: Mr. Chairman.

22 CHAIRMAN ROBERTI: Senator Keene, and then Senator
23 Petris.

24 SENATOR KEENE: I've got several questions, so perhaps I
25 ought to yield to Senator Petris.

26 SENATOR PETRIS: Mine's shorter, I think.
27
28

1 To Mr. Bellomo, I'm trying to sort out who knew what and
2 when, so if you can help me on clarifying your prior comments.

3 Apparently -- let's see if I'm correct in my
4 understanding of the facts -- apparently sometime in '83, shortly
5 after you came aboard, the Health Department recommended that
6 this be put on the big list.

7 MR. BELLOMO: The National Priorities List.

8 SENATOR PETRIS: Yes. And later that was changed, in
9 October of last year, I guess, that was changed?

10 MR. BELLOMO: No.

11 SENATOR PETRIS: That wasn't changed?

12 MR. BELLOMO: No.

13 DR. KIZER: No.

14 SENATOR PETRIS: Does the State Health Department still
15 recommend that this go on the Superfund?

16 MR. BELLOMO: Yes. There is no change. We still
17 recommend that that site go on the Superfund list.

18 SENATOR PETRIS: The north?

19 MR. BELLOMO: No, the northern is not the hazardous
20 waste disposal site. The southern portion is the hazardous waste
21 disposal site. So our position there has not changed.

22 SENATOR PETRIS: Well, is it true that the Department in
23 '83 recommended the entire site, meaning both north and south, go
24 on the Superfund list?

25 MR. BELLOMO: No, we wanted the entire hazardous waste
26 disposal site to go on, but not the northern parcel.

1 And I think where there may be some confusion is in a
2 letter --

3 SENATOR PETRIS: That's what I'm trying to find out.

4 MR. BELLOMO: Right.

5 There's been some confusion for me as well.

6 In a letter that I had sent to EPA, I had indicated that
7 a prior reference to 190 acres was in error.

8 SENATOR PETRIS: Was a mistake.

9 MR. BELLOMO: Right, that's right.

10 And I had believed --

11 SENATOR PETRIS: What was that prior reference? Was
12 that in a prior official letter from the Department?

13 MR. BELLOMO: No, no, not at all. It turns out that
14 reference was in an attachment that we had placed in the ranking
15 package that we had sent to EPA, and it was a document that the
16 Regional Water Quality Control Board had prepared. And they had
17 made reference to 190 acres.

18 It was not my --

19 SENATOR PETRIS: So that was not the intention of the
20 Department at the time?

21 MR. BELLOMO: No, but I did want to clarify with EPA,
22 and that was the purpose of my letter, that if they construed it
23 to be a request, we wanted them to know that that was not our
24 intent, currently was not.

25 SENATOR PETRIS: Okay.

26 DR. KIZER: Senator Petris, just as one follow-up to
27 that, as I have talked to the people who are involved in this
28

1 quite sometime before I ever joined the Department, they have
2 unanimously said that it was never their intent, never their
3 desire that the whole 190 acres be listed on the Superfund; that
4 always it was the intent that only the hazardous waste disposal
5 area south of the freeway be listed on the Superfund.

6 SENATOR PETRIS: Let me ask you in connection with that,
7 apparently Senator Torres has referred to a couple of reports
8 that neither of you have heard about before, listing certain
9 specific hazardous substances that have been dumped at sometime
10 prior to the later dates, sometime back.

11 If that turns out to be accurate, would that change your
12 opinion or your policy?

13 MR. BELLOMO: It wouldn't change mine.

14 DR. KIZER: Well, it may change mine depending on the
15 information. I always reserve the right to make a decision based
16 on the information I have at hand.

17 I think the point that's to be made here is that my
18 staff advised me that Mr. Torres is wrong, and that the
19 information he has is not correct as far as hazardous materials.

20 SENATOR PETRIS: He was reading verbatim from federal
21 reports of some kind, two of them.

22 SENATOR TORRES: Who on your staff has different
23 information? Angelo does?

24 MR. BELLOMO: I think with reference to the 190 acres I
25 do differ. My staff and myself believe that there was not
26 reference to 190 acres in the proposed listing.

1 SENATOR PETRIS: I was referring to the letter he read
2 from containing four hazardous substances.

3 SENATOR TORRES: It's the 1979 U.S. House of
4 Representatives Commerce Committee Report, which was --

5 MR. BELLOMO: Okay, and again, I think I mentioned this,
6 that that Eckert report, which I believe that's what you're
7 making reference to, although I haven't seen it, it makes
8 reference to hazardous waste being disposed of at the Operating
9 Industries landfill. It doesn't say on the 45 acre northern
10 parcel.

11 SENATOR TORRES: But we don't know where it was disposed
12 of.

13 MR. BELLOMO: Well, we do in that the City and the
14 County and the Regional Board records indicate that disposal took
15 place -- that the only disposal that took place in those
16 intervening years was on the southern parcel.

17 SENATOR TORRES: But you've indicated there has been no
18 dumping after '52.

19 MR. BELLOMO: There has been on the southern parcel.

20 SENATOR TORRES: The southern parcel, but you are saying
21 there has been no dumping that you know of on the northern
22 parcel.

23 MR. BELLOMO: That's correct.

24 DR. KIZER: I think the point there is that they think
25 that you're reading or interpreting that incorrectly. I think
26 that's the point to be made.

27 SENATOR KEENE: Is it time yet, Mr. Chairman?
28

1 CHAIRMAN ROBERTI: Senator Keene is recognized.

2 SENATOR KEENE: Thank you very much.

3 I want to direct your attention, Dr. Kizer, to three
4 areas with respect to the questions.

5 One is the dates of dumping on the northern parcel, and
6 what was dumped there, and what was found there?

7 Second, the benefits to Mr. Harabedian and Operating
8 Injuries -- Industries as a consequence of the offer to make \$7
9 million available from the sale of the northern site in order to
10 clean up the southern site, and the wonderful advantages that
11 will accrue to the people of California, particularly the people
12 of Monterey Park.

13 And third, to the ostensible innocence of your lobbying
14 effort in going to Washington.

15 Let me start with the dates of the dumping. Several
16 times both you and Mr. Bellomo responded to the question of
17 whether there was dumping in the northern site after 1952 in the
18 negative. You indicated that there was none; is that correct?

19 MR. BELLOMO: That's the information we have, yes.

20 SENATOR KEENE: Is there a Laureen Gamble who works for
21 you or once did?

22 MR. BELLOMO: Not any longer but did in 1983.

23 SENATOR KEENE: I have a memorandum dated November 15th,
24 1983, in which she indicates she encloses a compilation of a
25 number of documents. The memorandum goes to someone named Karen
26 Konnert. It's dated November 15th, 1983.

27 I'll get this compilation of documents to you shortly.

1 And as indicated by Dr. Kizer, he will amend his
2 position as he finds information to cause that to become the
3 case.

4 She provides an Operating Industries site chronology
5 that begins prior to 1948 with the sand and gravel pit
6 operations. It goes on through several modifications in the use
7 of that particular site. In 1957, the site was increased from 84
8 to 190 acres for commercial dump operations allowed on the
9 portion on a site outside City of Monterey Park limits.

10 Now, that 190 acres had to be the full parcel, the
11 northern portion and the southern portion of the parcel.

12 In 1958, and I'm continuing with her chronology,
13 Monterey Park Municipal Code Standards for Commercial Dumps
14 applied to the entire site, and that's 1958.

15 Let's go to 1974 in her chronology. Pomona Freeway
16 route taken by eminent domain splitting the site into 145 and 45
17 acre parcels, residential encroachment nearly complete.

18 She encloses another document that indicates to me
19 conclusively that dumping continued up until about 1976. This is
20 a 1976 document, State of California Resources Agency, California
21 Regional Water Quality Control Board, Los Angeles Region:

22 "The California Regional Water
23 Quality Control Board Los Angeles
24 Region finds ..."

25 among other things, and I'm quoting now:

26 "... Operating Industries has
27 offered to eliminate further dis-
28

1 posal of wastes in the entire 45
2 acre area north of the Pomona
3 Freeway."

4 Why would they offer to eliminate further disposal of
5 wastes in the entire 45 acre area north of the Pomona Freeway if
6 they weren't dumping there?

7 MR. BELLOMO: Because I think the Regional Water Quality
8 Control Board's original permit to them for municipal refuse
9 included the 45 acre parcel when it was first issued.

10 SENATOR KEENE: Why, in 1976, would the industry itself
11 offer to stop dumping if they hadn't been dumping since 1952?

12 MR. BELLOMO: Because maybe what they were trying to
13 indicate -- and again, my staff may have some more specific
14 information, Senator Keene -- but maybe what they were indicating
15 is that they were authorized under the prior permits to dispose
16 there. And even though they hadn't used it, they were giving up
17 that authorization.

18 SENATOR KEENE: Let me read you the language once again,
19 because you're suggesting something that the words -- a meaning
20 that the words won't bear:

21 "Operating Industries has offered
22 to eliminate further disposal of
23 wastes."

24 That, to me, suggests clearly that they have been disposing of
25 wastes and they've offered to stop.

26 It doesn't indicate that clearly to you?

27 MR. BELLOMO: No, not necessarily.
28

1 SENATOR KEENE: Your supposition is that they stopped in
2 1952, and in 1976, they're saying: Hey, we're going to stop?

3 MR. BELLOMO: What I'm suggesting is that it sounds to
4 me like what they're doing, because of the other information I
5 have got, which suggests no disposal, it sounds to me like what
6 they're doing is, in order to get the City of Monterey Park to
7 grant their request, they're willing to give up the ability to
8 dispose of on the 45 acre parcel.

9 SENATOR KEENE: It certainly doesn't sound that way to
10 me. That sounds like the least probable of interpretations one
11 could put on this particular language. It's a formal report by
12 the Regional Water Quality Control Board, and I would submit that
13 that is not certainly the most probable conclusion, but rather
14 that dumping did continue up until 1976.

15 You said it wouldn't matter because even if dumping had
16 gone to 1985, that wouldn't change your conclusion.

17 MR. BELLOMO: Senator Keene, what I'm going to rely on
18 -- certainly I'll be anxious to see all new information -- but
19 what I'm going to rely on are hard facts; facts that you get when
20 you stick borings into this property and come up with an
21 analysis.

22 As I said, if the disposal took place until yesterday,
23 if the borings that are done on the property suggest the material
24 can be safely removed in the manner proposed, then I will proceed
25 with doing it.

26 And I don't want to place the site on the National
27 Priorities List.

28

1 SENATOR KEENE: Why would there be approval of
2 commercial dump operations under your chronology, provided by
3 your employees at the Department of Health? Why would they allow
4 commercial dumping operations in 1957 on the full 190 acres if
5 they stopped dumping on the 45 north in 1952?

6 DR. KIZER: Mr. de Llamas, you were party --

7 MR. DE LLAMAS: Yes, and I can answer the question, I
8 think.

9 SENATOR KEENE: And why would your City apply its
10 Municipal Code Standards for Commercial Dumping to the entire
11 site if they weren't dumping on the northern site?

12 SENATOR TORRES: Mr. Keene, this is the document that
13 Dr. Kizer referred to -- that I referred to earlier, and he said
14 that I had interpreted wrongly.

15 I think we're interpreting it correctly in terms of what
16 was dumped there or what isn't dumped there.

17 DR. KIZER: We'll see.

18 SENATOR KEENE: Sir, can you just give me an answer to
19 my question? I've waited around all day to ask these questions,
20 and I hope that you have answers that are as brief as the manner
21 in which I'm asking them.

22 MR. DE LLAMAS: I'll try.

23 SENATOR KEENE: I don't need a history lesson nor a
24 geography lesson.

25 MR. DE LLAMAS: In 1957, the City boundaries looked like
26 this here. In 1957, Los Angeles County allowed them a permit to
27 operate a commercial fill outside the City boundaries here.
28

1 In 1958, the City, because they decided -- and the City
2 opposed that dump that the County had provided.

3 SENATOR KEENE: Why did you apply your Code Standards to
4 the entire site if they were not dumping on that site after 1952?
5 Why would you bother to do that?

6 MR. DE LLAMAS: Because they had a conditional use on
7 those sites that were in the City at the time, and what happened
8 from 1952 to 1958, there were a number of annexations where the
9 property was wholly annexed under annexation agreements, and they
10 were allowed to expand their operation.

11 They did not dump after -- after February of 1952, but
12 they did enter into an agreement with the City of Monterey Park
13 in 1975, whereas the City allowed them to increase the height of
14 the 130 acre dump on the south side of the freeway, and there
15 were a whole number of conditions and things that the City
16 received in return, but one of the things the City also specified
17 was that you will never in the future, even though you have not
18 now, you will never in the future dump north of the freeway or
19 east of Greenwood Avenue.

20 So, in 1976, when they went to the Regional Water
21 Quality Control Board and made that offer, they couldn't do it
22 anyway. I mean, it was an easy offer to make. They already had
23 an agreement that they couldn't dump over there.

24 SENATOR KEENE: Let's go back to the issue of benefits
25 to Mr. Harabedian and Operating Injury -- Industries.

26 That's a terrible Freudian slip, Operating Injuries. I
27 didn't do it intentionally, I want to assure you, despite what
28 may come out in a little bit.

1 If both properties, the northern and the southern
2 parcels, stayed on the Superfund list, and federal monies were
3 spent to clean it up, presumably the owner would be liable for
4 the amounts required by the federal government, and there would
5 have to be an effort to replace those monies from the owners of
6 the property. That's how the federal Superfund works, as I
7 understand it.

8 MR. BELLOMO: Yes.

9 SENATOR KEENE: If you sell the upper parcel, the 45,
10 for \$7-plus million and \$7 million is devoted to cleaning up the
11 acreage below, first because it's removed from the Superfund
12 list, the 45 acres to the north, there is no longer any liability
13 for those 45 acres because it's not on the federal Superfund list
14 and it's outside the application of the law.

15 But second, the \$7 million that is used to clean up the
16 145 acres to the south removes the owner from liability because
17 it's considered a voluntary cleanup. And if it's considered a
18 voluntary cleanup, what are the benefits to the residents of
19 Monterey Park when the company is released from criminal
20 liability? The company is released from civil penalties? The
21 company is released from joint and several liability? All for \$7
22 million.

23 That's pretty cheap, isn't it?

24 MR. BELLOMO: Senator Keene, I will tell you with regard
25 to those two questions, your one issue is quite correct. That is
26 that if the money was spent by the responsible party, then EPA
27 would not go after Operating Industries to recover costs,
28 obviously.

1 Your second point, though, relating to liability, future
2 liability, even if your site is cleaned up, strict liability
3 provisions under State and federal law will make you responsible
4 for any future problem at that site.

5 SENATOR KEENE: The concept of voluntary cleanup is an
6 elimination of liability as I understand it.

7 MR. BELLOMO: That's incorrect.

8 SENATOR KEENE: That's not correct?

9 MR. BELLOMO: That's right.

10 SENATOR KEENE: We'd better check out that point, too.
11 That's something that the staff needs to check out because I
12 suspect that it is. I suspect that the government is settling
13 out of court on this one and saying: Hey, you give us the \$7
14 million, and we're going to free you from liability for the
15 cleanup of the 145 acre parcel.

16 And that's what this is all about.

17 MR. BELLOMO: No, that's not true at all, Senator Keene.

18 MR. DE LLAMAS: Let me clarify that, too.

19 There's an easy solution. The developer, at a meeting
20 of November 5th in San Francisco, offered to have the 45 acres
21 named as a separate Superfund site, saying that: Look, if you
22 make it a separate Superfund site, then we know that our
23 liability is simply limited to that 45 acres which we know we
24 have to clean up anyway.

25 And the response was: Well, we can't do that because it
26 wouldn't qualify for Superfund listing.

1 The real crux of this issue with EPA is that on the
2 meeting of February 5th, they basically told us: If the
3 developer gave up 10 acres of property on the north side of the
4 freeway, they could make this whole issue go away.

5 And we've just -- everyone simply refused.

6 SENATOR KEENE: Well, that's what I'm worrying about,
7 making the issue go away.

8 Let me talk to you about the study that you're doing for
9 cancer, birth defects, other abnormalities in the area
10 surrounding this dump site.

11 Don't you think it's appropriate to wait until the
12 results of that study are in before you recommend that this be
13 developed, that that 45 acre parcel be developed?

14 Don't you, the City of Monterey Park, care to know the
15 results before it gets developed, and aren't you afraid that the
16 results, if they come in, are going to be so bad, so bad, and
17 you've had complaints that have generated this study, that you're
18 not going to be able to develop that 45 acres and that this
19 thing is going to come apart?

20 DR. KIZER: No.

21 MR. BELLOMO: No.

22 MR. DE LLAMAS: Once again --

23 SENATOR KEENE: You don't think it's appropriate to wait
24 for the results of the study?

25 DR. KIZER: No.

26 MR. BELLOMO: No.

27 SENATOR KEENE: Why? Tell me why?
28

1 DR. KIZER: Simply because --

2 SENATOR KEENE: Because if it showed a tremendous
3 incidence of cancer there, you would not be alarmed, and you
4 would not say: Hey, wait a minute; we'd better take another
5 look.

6 MR. BELLOMO: Senator Keene, of course I'd be alarmed.

7 Again, there is a major hazardous site there, one of the
8 most significant in the State of California. Of course we're
9 going to be alarmed.

10 But it doesn't have any relevant effect on removal of
11 the refuse that's piled on the 45 acre parcel.

12 SENATOR KEENE: It doesn't have any --

13 MR. BELLOMO: It doesn't have an effect on what actions
14 would be done because in the final analysis, what we're proposing
15 to do on that 45 acre parcel to clean it is exactly what the
16 federal government would do, but it would just take a much longer
17 period of time.

18 SENATOR KEENE: Let me tell you, if the cancer rate was
19 high enough, as might be suspected to be the case based on some
20 of the complaints that were made to your Department that
21 generated the study in the first place, if it were high enough,
22 you would be lynched if you recommended that that parcel be
23 developed.

24 So, if you think the political backlash would not be
25 sufficient, let me tell you it would be. And you ought to wait
26 for the study, and you down in Monterey Park ought to wait for
27 the study, too.
28

1 DR. KIZER: I think that underscores the point here, is
2 that political considerations have not been a component of this
3 whole thing.

4 SENATOR KEENE: Well, let's talk a little bit about
5 that.

6 I listened very closely to your testimony.

7 DR. KIZER: You should believe it.

8 SENATOR TORRES: I don't believe anything you say.

9 SENATOR KEENE: When you went to Washington and in a
10 letter that you wrote to the San Jose Mercury in response to
11 their article, you indicated you weren't lobbying; you were just
12 responding to discuss a technical disagreement.

13 Now, I pay a lot of attention to the words. I pay a lot
14 of attention to the meaning of words, the tone in which they're
15 used, and so forth. The disagreements were just technical.

16 Correct me if I'm misinterpreting what you're saying.

17 And then the interesting question arose: Why you? Why
18 the head of the largest health agency probably in the country, or
19 certainly one of them? Why you? Why not just a letter; why not
20 just the top aide?

21 And the answer is: Well, you were just responding to
22 the EPA. The EPA came forth and they wanted you to come. They
23 invited you to come, and you were just responding to that.

24 Now, didn't you say: Hey, there are hundreds of sites
25 that are potential Superfund sites. Why do you need me? What's
26 so special about this particular site?

27 Did you say that?
28

1 DR. KIZER: You're absolutely correct.

2 SENATOR KEENE: And what did they say?

3 DR. KIZER: Because they said they felt they wanted
4 someone who could represent the State's position. I said: But
5 you've already had a meeting; you've had Mr. Warner; you've had
6 Mr. Ramey back there who have espoused the position of the
7 Department. And their comments were that that's not adequate;
8 they wanted someone who could speak for the State; they wanted
9 someone in a higher level position.

10 SENATOR KEENE: And then did you say: Why this site?
11 There are hundreds of others. Are you going to make me come back
12 for every one? How am I going to do my duties as Director of the
13 Department of Health?

14 Did you say that to them?

15 DR. KIZER: Well, as I --

16 SENATOR KEENE: Or do you intend to go back when they
17 ask you to on each and every site?

18 Did you say: What's special about this site?

19 DR. KIZER: The point -- you're absolutely right --

20 SENATOR KEENE: Did you know what was special about this
21 site?

22 DR. KIZER: No, you're right. I asked them the
23 question, and I've already answered that question, that this is
24 an unique site in EPA's history as far as evaluating Superfund
25 sites.

26 They have never looked at a site where there was either
27 a man-made or a natural separation of two possible components to
28 be on the listing.

1 They --

2 SENATOR KEENE: That's a distinction without a
3 difference. Mr. Bellomo testified earlier that there are
4 hundreds of similar sites that could be taken off --

5 MR. BELLOMO: That's not true.

6 SENATOR KEENE: -- the Superfund list.

7 MR. BELLOMO: No, not at all.

8 SENATOR KEENE: What did you say?

9 MR. BELLOMO: What I was making reference to are a
10 number of sites that are very much like this 45 acre parcel that
11 are going to required to be cleaned up. They're important but --

12 SENATOR KEENE: And if they get on the Superfund --
13 What if they get on the Superfund list?

14 MR. BELLOMO: I don't think EPA will ever repeat this
15 action with any other site, so I don't anticipate that ever
16 happening again.

17 SENATOR KEENE: The special thing here is the freeway?

18 DR. KIZER: The special thing here is that they've never
19 before been confronted with the situation where they have a
20 separation of two pieces of property that are being considered.

21 So, it is a very special site to EPA. The question was
22 asked, they answered it.

23 I asked also why my staff was not adequate, and they
24 responded that they felt they were mid-level bureaucrats and that
25 they were underlings, and they wanted someone in a higher
26 position.

27 It's that simple.
28

1 SENATOR KEENE: Did you testify that the Governor never
2 asked you to go?

3 DR. KIZER: I did, and I will again because that's true.

4 SENATOR KEENE: Have you ever spoken to the Governor in
5 advance of the EPA meeting about this particular site?

6 DR. KIZER: I have not.

7 SENATOR KEENE: Why, then, did you make a point of
8 telling the EPA people that you were speaking for the Governor?

9 DR. KIZER: I was speaking for the State. I was
10 representing the Department's position.

11 The specific request that was made from EPA was they
12 wanted someone who could, quote, "speak for the State", unquote.

13 It's a general policy in this administration that before
14 anyone goes before a federal agency and portrays a State
15 position, that they will get clearance from the Governor's Office
16 before they do that.

17 It's that simple.

18 SENATOR KEENE: Did you not say that you were speaking
19 for the Governor?

20 DR. KIZER: I don't believe I said that.

21 SENATOR KEENE: You don't believe you said that earlier
22 in this testimony today?

23 DR. KIZER: No, or any other time.

24 SENATOR KEENE: And you don't believe you said that at
25 the meeting with EPA in Washington?

26 DR. KIZER: The question, I think, was asked whether
27 this was an official position of the State, and I made the
28

1 comment as part of my opening comments, and my comments were very
2 brief at that meeting, that this was the State's position; it had
3 been cleared with the Governor's Office.

4 CHAIRMAN ROBERTI: You did represent that it was the
5 State's position and had been cleared with the Governor's Office?

6 DR. KIZER: That is correct, just as we would with any
7 other issue that we bring before federal agencies.

8 CHAIRMAN ROBERTI: Who in the Governor's Office did you
9 clear it with?

10 DR. KIZER: As I mentioned earlier, I brought it to the
11 attention of Art Scotland. It was raised; he did not respond.
12 It was raised a second time; it was discussed, and he said: Go
13 ahead.

14 CHAIRMAN ROBERTI: What is his position?

15 DR. KIZER: He's the Governor's Cabinet Secretary.

16 CHAIRMAN ROBERTI: You do not know who Mr. Scotland
17 talked to?

18 DR. KIZER: I do not know. He gave me permission over
19 the phone.

20 Basically the comment was: We don't have any objections
21 to your going back and representing this as the State's position
22 in light of the information that you've presented to us.

23 SENATOR KEENE: If I may just complete my questioning.

24 Why are you conducting a survey of the rates of cancer
25 or birth defects, other abnormalities, around the site?

26 DR. KIZER: We're doing that as we are at many sites in
27 the State where questions have arisen as to potential adverse
28

1 health effects in relation to proximity to a hazardous waste
2 site.

3 As you are aware, there are a number of those studies
4 going on.

5 SENATOR KEENE: I have here the recommendation by Region
6 9 for inclusion on the NPL, and it says about Operating
7 Industries -- and I think Senator Torres read portions of this --
8 it says:

9 "About 23,000 people within three
10 miles of the site use ground water
11 as a source of drinking water."

12 Are you concerned about the contamination of that ground
13 water?

14 DR. KIZER: Yes.

15 MR. BELLOMO: Absolutely.

16 SENATOR KEENE: And if so, why is the development being
17 recommended on the 45 acre site?

18 DR. KIZER: Those are not homes.

19 SENATOR KEENE: But the area continues to develop, I
20 presume. People will work there.

21 DR. KIZER: The issue is will the ground water be used
22 for human consumption? Is the ground water contamination issue
23 relevant to the consideration of building a business park over
24 that area?

25 SENATOR KEENE: I would assume that some people will
26 drink water in the area.

27

28

1 MR. BELLOMO: No, I don't think EPA is going to be
2 concerned about that because they have declared the entire San
3 Gabriel and San Fernando Valley water basins a Superfund site,
4 but yet they are not restricting development on any property on
5 top of that underground aquifer.

6 We do believe the ground water is going to be a
7 significant problem, but we can mitigate it. And that
8 development has nothing to do with our ability to mitigate that
9 problem.

10 CHAIRMAN ROBERTI: Let's get this straight. What you've
11 just told me is news to me.

12 First San Fernando, San Gabriel aquifer is now going to
13 be recommended or is on the Superfund?

14 MR. BELLOMO: No, these currently are on, Senator
15 Roberti. They are underground water basins.

16 CHAIRMAN ROBERTI: I know.

17 MR. BELLOMO: And they are currently on.

18 CHAIRMAN ROBERTI: The Los Angeles County area is always
19 very intense and smug -- I live there myself -- over the fact
20 that we have so much ground water supplies.

21 You're telling me that it's all ready for the Superfund?

22 MR. BELLOMO: Yes, some of it is already on the
23 Superfund list.

24 CHAIRMAN ROBERTI: Now you're also telling me that
25 development over this parcel really doesn't effect its cleanup?

26 MR. BELLOMO: It does not effect the ground water
27 problem, that's correct, nor does it effect the cleanup of the
28 southern parcel.

1 CHAIRMAN ROBERTI: You mean cleaning up a major source
2 of contamination isn't even a factor? I know it's a much larger
3 area than --

4 MR. BELLOMO: We don't expect --

5 CHAIRMAN ROBERTI: -- the Monterey Park dump site is.

6 MR. BELLOMO: Senator Roberti, we don't expect -- we do
7 not expect that we're going to have to do anything to the freeway
8 that's there because the controls that we'll have to put in place
9 for ground water treatment will be done around the freeway, and
10 they can be done around this development as well.

11 Because what we're talking about in cleaning up ground
12 water, which is going to be a major problem in this entire
13 region, is pumping water at the well heads and treating them at
14 the well heads and then reinjecting them into the underground
15 aquifer.

16 And I would envision in the next five to ten years,
17 we're going to see a lot of well treatment systems that are
18 operating in that general area.

19 CHAIRMAN ROBERTI: Are there well heads in this general
20 vicinity?

21 MR. BELLOMO: Yes.

22 CHAIRMAN ROBERTI: But development, covering it with
23 asphalt, whatever, wouldn't make a bit of difference?

24 MR. BELLOMO: No well heads will be covered with
25 asphalt. There aren't any on this property.

26 CHAIRMAN ROBERTI: Senator Keene.
27
28

1 SENATOR KEENE: A member of Assemblyman Calderon's staff
2 was present at the meeting with EPA in Washington and insists
3 that you said you were speaking for the Department of Health
4 Services and the Governor. And he says he remembers it because
5 his eyebrows were raised when you used the word "Governor", and
6 he remembers it very distinctly.

7 This is Rich Martinez. He's here to testify if the
8 Committee wishes to hear him on that point.

9 CHAIRMAN ROBERTI: Mr. Martinez, are you here? Come
10 forward.

11 Identify yourself and what your position is.

12 MR. MARTINEZ: Richard Martinez, Assemblyman Calderon's
13 staff.

14 CHAIRMAN ROBERTI: Senator Keene.

15 SENATOR KEENE: Mr. Martinez, you're employed by
16 Assemblyman Calderon?

17 MR. MARTINEZ: That's correct.

18 SENATOR KEENE: And you were present at a meeting about
19 when in Washington?

20 MR. MARTINEZ: January 7th, Washington, D.C.,
21 approximately 9:30.

22 SENATOR KEENE: And Dr. Kizer was present at the same
23 meeting?

24 MR. MARTINEZ: That's correct.

25 SENATOR KEENE: Was he asked or did he volunteer at some
26 point for whom it was that he was speaking?

27
28

1 MR. MARTINEZ: He was asked to make a presentation.
2 There was an agenda and he listed -- I believe he was listed on
3 that agenda. At some point he did make a presentation. He did
4 specifically use the words that the Department of Health Services
5 and the Governor. And I put that in my notes because I was very
6 surprised when he made that statement.

7 CHAIRMAN ROBERTI: Relating to what? In relationship to
8 what?

9 MR. MARTINEZ: Support of the removal of the 45 acres
10 from the federal Superfund list.

11 DR. KIZER: The comment that was made, as I recall --
12 and I have no qualms about this; I think there's nothing at all
13 wrong with it -- was that this position had been cleared by the
14 Governor's Office, and that I was representing the Department and
15 the Governor's Office.

16 Quite frankly, I must question whether your memory is
17 indeed accurate here given the fact that at that meeting you did
18 make a statement that I will be hearing more about this, and that
19 I would be sorry that I attended.

20 MR. MARTINEZ: I don't believe that's accurate. What I
21 said --

22 DR. KIZER: You did make that in front of other people.

23 MR. MARTINEZ: -- you would have the opportunity --

24 CHAIRMAN ROBERTI: Ask through the Chair.

25 MR. MARTINEZ: Mr. Chairman, could I respond to that?

26 CHAIRMAN ROBERTI: Yes.

27 MR. MARTINEZ: Thank you, Mr. Chairman.
28

1 What I did say at that meeting is that -- and
2 additionally it was in response to your question to me to provide
3 the details for our conclusion that it was not a good idea to
4 remove the 45 acres from the Superfund -- that I had, because of
5 the short notice that we'd had of the meeting, I didn't have an
6 opportunity to adequately prepare for that meeting, but that my
7 boss had been briefed by EPA as to the details that led us to
8 that conclusion.

9 And I said that when you got back to Sacramento, that
10 you would have an opportunity to discuss those details with my
11 boss. I believe that's a more accurate description of the
12 conversation that you referred to earlier.

13 DR. KIZER: I don't agree, but that's okay. There was
14 another party here that was also at that meeting.

15 MR. MARTINEZ: Well, there were quite a number of other
16 people there that could respond to that.

17 CHAIRMAN ROBERTI: Senator Keene.

18 SENATOR KEENE: Who was the highest person in the
19 administration that you spoke to on this issue prior to the EPA
20 meeting, or that you communicated with in writing to this EPA
21 meeting?

22 DR. KIZER: Art Scotland, the Governor's Cabinet
23 Secretary.

24 SENATOR KEENE: Thank you.

25 SENATOR DOOLITTLE: Mr. Chairman.

26 CHAIRMAN ROBERTI: Senator Doolittle.
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1 SENATOR DOOLITTLE: Dr. Kizer, going back to the
2 liability issue, you indicated that if the two sides showed up as
3 one site on the Superfund list, there would be potential
4 liability to the State because of the freeway being there.

5 What would be possibly the extent of that liability?

6 DR. KIZER: Well, as my attorneys -- and I do have my
7 attorneys here that could comment on that better than I -- but
8 the thinking is that if it's viewed as one site, and because the
9 State of California owns the freeway right-of-way that bisects
10 the two sites, that we are and would be liable to be a
11 responsible party to cleaning up the entire site because we own
12 part of the land and under the laws all people who own part of
13 the land are liable.

14 EPA has indicated verbally recently, because this was
15 raised, and Mr. Barnes at EPA did acknowledge that they had
16 considered this. Recently they have said that -- they verbally
17 have told my staff that they would not include the freeway, but
18 the immediate question that raises, then, is that is a clear
19 statement that they are indeed separate sites or why would you
20 not include the freeway as part of the total area?

21 It's illogical. It doesn't make sense. The two thought
22 processes just don't follow if that's the way they're thinking.

23 SENATOR DOOLITTLE: So, as far as the State's concerned,
24 it would be in the best interests of the State to have the two
25 separated?

26 DR. KIZER: That has been our thinking, yes.
27
28

1 SENATOR DOOLITTLE: I assume, since you indicated that
2 no official position of the State may be represented to the
3 federal government without approval from the Governor's Office,
4 that when the statement is therefore made that the State supports
5 a point of view, that obviously reflects the Governor's point of
6 view?

7 DR. KIZER: That's correct, and because of that, it's
8 standard operating procedure that if we're going to portray a
9 position before a federal agency as a State position, that we
10 will get clearance from the Governor's Office. That's not
11 dissimilar to what may occur with any number of issues every day.

12 SENATOR DOOLITTLE: Senator Torres had indicated we were
13 going to get a copy of the Federal Register. Is that on its way?

14 SENATOR TORRES: We have not been able to obtain it.

15 SENATOR DOOLITTLE: Thank you.

16 SENATOR TORRES: If I may add as a footnote, Mr.
17 Chairman?

18 CHAIRMAN ROBERTI: Senator Torres.

19 SENATOR TORRES: I believe the EPA has told us that it
20 doesn't matter whether the site is separated or not. That will
21 have no impact on determining the State's responsibility or
22 claiming that the State should be responsible.

23 DR. KIZER: I have asked for a written clarification of
24 that from EPA, and they have not been forthcoming with a response
25 to that question. I've asked them point blank do they intend to
26 obligate the State, and they have yet to respond.

27

28

1 SENATOR TORRES: They have not made a decision on that,
2 as they've indicated to me, and that's not what I was saying, Dr.
3 Kizer.

4 What I was saying was that their decision will not be
5 based upon whether the 45 acre site is in or out.

6 MR. MARTINEZ: Mr. Chairman, I have some information on
7 that point.

8 CHAIRMAN ROBERTI: Mr. Martinez.

9 MR. MARTINEZ: I had a discussion with the EPA attorney
10 who was in charge of this site, and she told me that as far as
11 EPA was concerned, that the State was a responsible party
12 regardless of whether or not the north parcel was included on the
13 federal Superfund list, that it was irrelevant.

14 The point -- the point that you make -- I mean, you're
15 attempting to say that, you know, the motive for EPA's including
16 the 45 acres in the federal Superfund is to make the State a
17 responsible party.

18 In my conversation with the EPA attorney in charge of
19 the site, Lisa Hagey, she indicated to me that that in fact was
20 not the case, that they considered the State a responsible party
21 in any event.

22 SENATOR DOOLITTLE: Well, Mr. Chairman, I gather that
23 the State's attorneys take a different point of view so that
24 issue's in dispute, I would think.

25 SENATOR KEENE: Mr. Chairman, there are other issues
26 effecting the performance of the Director and the Department of
27 Health with respect to the regulation of hazardous waste
28 activities that don't relate to this particular site.

1 Shall we reserve those?

2 CHAIRMAN ROBERTI: We're on Operating Industries.

3 DR. KIZER: Mr. Chairman, may I?

4 CHAIRMAN ROBERTI: Dr. Kizer.

5 DR. KIZER: I've just been given a copy of the
6 Federal Register in October, 1984, and it does not indicate that
7 the Operating Industries site was 190 acres. It does not list
8 acreage on it.

9 CHAIRMAN ROBERTI: Do they list acreage of other sites?

10 MR. BELLOMO: No, just sites that are proposed are
11 listed, just the site itself.

12 CHAIRMAN ROBERTI: Let me ask either Dr. Kizer or Mr.
13 Bellomo, mention has been made of four studies which have
14 indicated the northern site did not have sufficient toxic
15 materials to qualify it for the NPL.

16 It's my understanding that the four studies did not
17 totally deal with the issue of toxic disposals that took place
18 there, but dealt with whether a freeway interchange could be
19 installed in one case; I think in another case I'm told that the
20 issue involved was whether there was sufficient strength in the
21 ground to build apartments.

22 The question I'm asking is: In making your decision
23 that the northern site should not be on the NPL, did you rely on
24 these studies? Was that a major factor in your decision making
25 process?

26 Or, if it's only the studies that we're relying on,
27 maybe we should have a study that is more concrete and dealing
28 more specifically with what has been deposited.

1 MR. BELLOMO: Yes, Senator Roberti, when we put together
2 a ranking package on sites, in some cases we have one sample.
3 And I think if you were to survey the sites that are on the NPL
4 as well as our State list, you'd find in many instances we only
5 have one sample.

6 In this case, though, because of the work that was done
7 to allow this development to take place, there were many more
8 than one sample, much more than one sample taken.

9 So, I think the information for ranking this site was
10 much more extensive than any other site that's ever been ranked
11 in the State of California.

12 But in addition, we're just saying that the total score
13 in the ranking package would have been well below what would
14 qualify for its listing on the NPL. You have to receive a
15 minimum score in order to be placed on the NPL, and this would
16 fall, based on the sampling that was done, well below that level.

17 CHAIRMAN ROBERTI: You're saying that it is a
18 combination of factors: what the four studies have indicated and
19 your own testing that you are relying on?

20 MR. BELLOMO: Yeah, that's correct. And I will tell you
21 that those studies were not the basis for whether or not we
22 placed it on the NPL. It was clear to our staff on all the
23 information that we had that the site was not appropriate for NPL
24 listing.

25 CHAIRMAN ROBERTI: One last question from me: What
26 difference does it make if a freeway runs through a dump site?

27
28

1 Much has been made that this is a major factor that
2 means that we have two dump sites. But can't contamination
3 crisscross underground? Can't the water be equally contaminated?
4 Isn't in some cases the history of the dumping possibly the same,
5 the owner the same, the care in which the dump site was treated
6 the same? At one time they may all have been one site?

7 The public health effects on the people who live
8 adjacent to the sites very well could be related. I really do
9 not understand why the freeway running through is such a big
10 difference.

11 MR. BELLOMO: Well, you had mentioned whether or not
12 there would be ground water contamination under both sites, and I
13 think that's one area where you're probably correct. There is
14 ground water contamination that migrates away from the Operating
15 Industries landfill and probably extends way out into the
16 regional area, perhaps even miles away from the site.

17 But in terms of the freeway construction, and when the
18 freeway was laid, I would only -- just based on some information
19 I've received from my staff -- when Cal Trans puts a freeway in,
20 they dig down extensively for the footings of those freeways.
21 And any refuse that might be laying on either site would have
22 been excavated down to grade for purposes of putting the pillars
23 in.

24 It's difficult for us to say now what kind of ground
25 water gradient we have in that area, but we don't believe that
26 there is material migrating. There certainly isn't liquids from
27 the southern parcel flowing over to the northern parcel. We do
28 know that.

1 There may be migrating gas, but in terms of liquids, no.

2 In terms of the migrating gas, those are controls that
3 are commonly in place and dealt with anytime you develop property
4 near a landfill.

5 CHAIRMAN ROBERTI: You're saying that the migrating gas
6 really is something that can be segregated between the two?

7 MR. BELLOMO: Yes, it's a problem that can be
8 controlled.

9 SENATOR KEENE: New question.

10 CHAIRMAN ROBERTI: Senator Keene.

11 SENATOR KEENE: Dr. Kizer, in the period before the
12 meeting in question with EPA in Washington, D.C., the January
13 meeting, did you ever have any conversations concerning this dump
14 site with representatives of Operating Industries?

15 DR. KIZER: The only meeting that I can think that you
16 might be referring to was sometime in the summer, and I don't
17 recall the exact time frame. It may have been July or so. There
18 was a meeting between our attorneys and representatives of
19 Operating Industries.

20 As I do on many occasions, I went in. I said: Hello,
21 how do you do; hope it's a productive meeting. And left. And
22 that was -- and whether I was there five minutes or ten minutes,
23 I don't know, but it was not -- I had no meetings of any
24 substantive nature before that.

25 SENATOR KEENE: Did you meet at that time, did you
26 encounter -- you encountered specifically attorneys from
27 Operating Industries?
28

1 DR. KIZER: I don't recall who was there. I know that
2 my legal staff was there, and the purpose was to talk about the
3 negotiations and the other legal activities that were going on.
4 But since I was not really a party to the meeting, I don't recall
5 who all the other people were.

6 SENATOR KEENE: You don't recall any of the people from
7 Operating Industries who were present at that particular meeting?

8 DR. KIZER: No, I do. This issue was raised in the
9 newspaper, and I don't recall which one, as to whether Mr.
10 Philibosian was there, and I do believe that he was there. But I
11 don't recall who the other people were, since their names have
12 not been raised.

13 CHAIRMAN ROBERTI: Is he their attorney?

14 DR. KIZER: I think he is.

15 SENATOR KEENE: Was he there or wasn't he, or don't you
16 recall?

17 DR. KIZER: I don't recall. I've been told he was
18 there, so I believe that he was there, but as far as my own
19 recollection of whether he was there or not, I don't but I've
20 been told he was and that's fine.

21 Again, it's the sort of activity which I'm sure you all
22 do many times a day as well, in that you will make a greeting and
23 say hello, but then you don't stay for the real meeting.

24 SENATOR KEENE: Did any of your representatives have
25 discussions with Mr. Philibosian?

26 DR. KIZER: I believe that my legal staff have had
27 discussions with representatives of Operating Industries. They
28

1 are here if you want to ask them specifically who they have met
2 with and on what occasions.

3 SENATOR KEENE: I'd like to.

4 May I, Mr. Chairman, briefly question the attorneys for
5 the Department?

6 CHAIRMAN ROBERTI: Please come forward any and all
7 attorneys for the Department.

8 SENATOR KEENE: Could you briefly identify yourself and
9 indicate whether you were present in a meeting or meetings with
10 representatives, specifically attorneys, from Operating
11 Industries?

12 MR. MARLIN: Certainly.

13 My name is William Marlin, and I'm a staff attorney with
14 the Department of Health Services.

15 And regarding the meeting in question, I was present on
16 behalf of the Department. Representing Operating Industries at
17 that meeting was Mr. Philibosian, Bob Woodruff, and a Daniel
18 Spradlin.

19 SENATOR KEENE: When did the meeting take place and
20 where, approximately?

21 MR. MARLIN: It took place in the Department of Health
22 Services. I would say approximately one year ago.

23 Diane Shell, our Chief Counsel, was also at the meeting.
24 Perhaps she can fill in the gaps.

25 MS. SHELL: I'm Diane Shell, Chief Counsel of the
26 Department of Health Services.

27
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1 And after reading the newspaper article, I went back to
2 my calendar and it was in the month of July, just after I had
3 come on board the Department of Health Services.

4 SENATOR KEENE: And Mr. Philibosian was present?

5 MS. SHELL: Yes.

6 SENATOR KEENE: And Dr. Kizer was present?

7 MS. SHELL: He stopped in, as was his custom. It was
8 the first time that we had met with Operating Industries folks.

9 SENATOR KEENE: Did they indicate to you at that time
10 that they wished the 45 acre parcel taken off the Superfund list?

11 MS. SHELL: That was not the topic of this conversation
12 at that time.

13 SENATOR KEENE: What was the topic?

14 MS. SHELL: The topic of the conversation was that we
15 were engaged in legal actions with them, and they wanted to know
16 who we could go about -- if there was any means by which we could
17 settle the legal actions by them surrendering all the assets of
18 the company to the State.

19 SENATOR KEENE: So, there was no discussion of the
20 Superfund list?

21 MS. SHELL: Not at that meeting.

22 SENATOR KEENE: Was there a later meeting in which there
23 was a discussion of the Superfund list?

24 MR. MARLIN: Not with those people.

25 MS. SHELL: No.

26 SENATOR KEENE: Who was the meeting with that involved
27 meeting or meetings involving removal from the Superfund list?
28

1 MR. MARLIN: There were many meetings. I could cite our
2 interagency meetings, which are held approximately monthly, where
3 the subject -- the interagency group also includes EPA, and the
4 subject of listing, once we found out that they were considering
5 the entire 190 acres, was much discussed in those meetings.
6 There were frequent phone conversations and correspondence with
7 EPA from the Department. Also conversations with Mr. de Llamas
8 regarding that.

9 SENATOR KEENE: Prior to the January meeting between Mr.
10 Kizer and EPA and others, was there ever any indication to you
11 that there was interest in this matter out of the Governor's
12 Office?

13 MS. SHELL: No.

14 MR. MARLIN: Not at all.

15 SENATOR KEENE: Thank you.

16 I have nothing further.

17 CHAIRMAN ROBERTI: Any further questions on the matter
18 of Operating Industries?

19 Are there any witnesses in the audience in support or
20 opposition to Dr. Kizer's confirmation on another issue, any
21 other issue? Please come forward and let me know, and I'll tell
22 you if we want to take it at this time. You will be heard.

23 MR. JOHNSTON: Brian Johnston of the California Pro-life
24 Council.

25 CHAIRMAN ROBERTI: Why don't we wait on that one.

26 SENATOR PETRIS: What's that?

27 CHAIRMAN ROBERTI: California Pro-life Council.
28

1 Why don't we wait on that one.

2 SENATOR PETRIS: We have their letter.

3 CHAIRMAN ROBERTI: I will call you, but Senator Petris,
4 I think, wanted to ask some questions on a different subject.

5 SENATOR PETRIS: Different subject.

6 CHAIRMAN ROBERTI: On something that's more related to
7 the other, and then we will get to you.

8 SENATOR PETRIS: I guess my first question is, what is
9 the feeling of the Chair on how much longer? Is this ultimately
10 going to be put over?

11 The witness has been on there a long time.

12 DR. KIZER: The witness has no fatigue, though.

13 SENATOR PETRIS: Pardon me?

14 DR. KIZER: The witness has no problems staying here
15 until you're satisfied.

16 SENATOR PETRIS: No problems.

17 COURT REPORTER: The reporter's fatigued.

18 (Laughter.)

19 SENATOR PETRIS: That was my next point.

20 CHAIRMAN ROBERTI: Let's recess for five minutes.

21 (Thereupon a brief recess was taken.)

22 CHAIRMAN ROBERTI: The Committee will come to order.

23 I think we have exhausted the questions on --

24 SENATOR CRAVEN: You've exhausted me.

25 CHAIRMAN ROBERTI: -- Operating Industries, and we've
26 exhausted Senator Craven also, but not for the first time.
27 Senator Craven's been through these before.
28

1 Now we might as well do this in compartments. The next
2 issue before us will be the question of aldicarb, and I suggest
3 that you make an opening statement, Dr. Kizer.

4 In the meantime, we're having the Sergeant-at-arms tell
5 us which roads are closed, because nature may be a determinant in
6 this hearing, but I have no idea as to what the status of things
7 outside is.

8 Yes, it's raining very hard.

9 DR. KIZER: Thank you, Mr. Chairman, I'm going to
10 abbreviate the comments that I had intended to give somewhat so
11 that we can move along here pursuant to your comments.

12 I think as with the previous topic, as I have reflected
13 on the aldicarb decision in the past several days, there are
14 several questions that I think I would have if I were sitting
15 where you are. These include the following:

16 What process did staff use to advise me of their
17 concerns and recommendations about this matter?

18 What are the Director's qualifications with regard to
19 interpreting and modifying his staff's recommendations?

20 What were the original staff recommendations on this
21 matter and were they appropriate?

22 How does the toxicity of aldicarb compare to other
23 commonly used chemicals?

24 What was the basis of the Director's judgement to modify
25 part of the staff's recommendations?

26 And lastly, since EPA has had aldicarb under formal
27 reevaluation since July 1984, why have they not called for a ban
28

1 on the sale of this pesticide, and relatedly, why have no other
2 states banned aldicarb?

3 If you'll give me a few minutes, I would like to walk
4 through the answers to these questions.

5 SENATOR PETRIS: Excuse me.

6 Where did those questions come from? Are those ours or
7 yours?

8 (Laughter.)

9 DR. KIZER: As I prefaced my --

10 SENATOR PETRIS: I missed that whole thing.

11 DR. KIZER: Again, as I have reflected on this, I think
12 there are six key questions that I would like to respond to, and
13 I think that they may well address some of your questions as
14 well.

15 SENATOR PETRIS: Yes, some of them sound familiar.

16 It doesn't matter where they came from. I think they're
17 questions that need to be answered.

18 Thanks.

19 DR. KIZER: First let me focus on the internal process
20 used by staff in making these recommendations, for as I will
21 explain in a minute, I was not satisfied with the staff work on
22 this matter.

23 In brief, following last summer's watermelon problem,
24 staff began to review their concerns about aldicarb as part of
25 the post incident review of the watermelon problem.

26 Subsequently they drafted a memo expressing those
27 concerns to the Department of Food and Agriculture. That draft
28

1 memo was forwarded from the Epidemiological Studies Section at
2 the end of November 1985.

3 I received the proposed memo without staff ever
4 inquiring as to what my thoughts or questions were on the matter.
5 And this is important, as we shall see in a few minutes, because
6 when I reviewed the proposed memo, I had important questions
7 which were not addressed and which my staff could not answer.

8 I suppose this is a good time to respond to some of the
9 concerns that I have read in some newspaper articles and heard on
10 television. This relates to my own qualifications to evaluate
11 staff recommendations on matters such as this.

12 Indeed, I can understand the confusion that some people
13 may have in this regard, since the previous Department's Director
14 was an attorney, and prior to that there was a professional
15 administrator and health economist.

16 Well, the Department of Health Services, is now under
17 the direction of a physician, and a physician who is a specialist
18 in all areas relevant to this discussion. Let me be specific.

19 I'm one of the two physicians in the Department who is
20 Board-certified in medical toxicology. To put that in
21 perspective, I should tell you that there are only 15 Board-
22 certified medical toxicologists in the State of California, and
23 about 100 such specialists in the entire United States.

24 Further, I'm the only physician in the Department who is
25 also Board-certified in the other two medical specialties most
26 relevant to the subject we're considering here. Indeed, the last
27 time I checked into this, I was the only physician in the State
28 of California Board-certified in all three of these specialties.

1 SENATOR PETRIS: Question.

2 Are any of those 15 toxicologists in the Department of
3 Agriculture?

4 DR. KIZER: No.

5 SENATOR PETRIS: Hear that, Mr. Van Nes?

6 Thank you.

7 DR. KIZER: These medical specialty criteria are also in
8 addition to my Master's Degree in Epidemiology and Public Health.

9 A couple of other points may be worth mentioning. I
10 peer review manuscripts on toxicology subjects for several
11 medical journals, including the prestigious Journal of the
12 American Medical Association. Similarly, I'm writing part of the
13 pesticide related questions for this year's specialty Board
14 examination in medical toxicology.

15 There are a number of other things I could mention, but
16 it is not my purpose here to recite my curriculum vitae.
17 Instead, I mention these things only because I think that it is
18 important for you to understand that the current Director of the
19 Department of Health Services is professionally qualified to make
20 independent assessments of the work done by his medical staff,
21 especially in this area.

22 Now, I suppose we should review specifically what lower
23 level staff originally recommended with regard to aldicarb. In
24 brief, they recommended five things. These were:

25 That aldicarb should be placed into formal reevaluation;

26 Two, that use of aldicarb should be suspended until
27 reevaluation was completed;
28

1 Three, that laboratory surveillance of potentially
2 contaminated crops should be intensified;

3 Four, that aldicarb's labeling and use conditions should
4 be reevaluated;

5 And five, that the practice of burning of empty tanks of
6 aldicarb should be discontinued.

7 On reviewing these recommendations, I agreed with most
8 of them. However, I thought the staff's work-up of the problem
9 had two major inadequacies.

10 First, it was inadequate in that it provided no
11 evaluation of the health effects of the pesticides that would be
12 used as alternatives to aldicarb if the use of aldicarb were
13 suspended. Indeed, when asked about this, staff readily agreed
14 that they did not consider any of the health concerns about the
15 alternatives.

16 I believe this is a very significant oversight. This
17 would be like telling a patient who's having occasional side
18 effects from their medication that you were going to discontinue
19 that medication and put them on a different medication, or
20 possibly two or three different medications, but you weren't
21 going to check and see if the side effects of the new medications
22 were worse than the original drug. That does not make sense, and
23 would be below the standard of practice in clinical medicine.

24 The second problem I have with the original staff
25 recommendations was that they had not taken into consideration
26 newly implemented or planned measures that address the misuse of
27 aldicarb. This is very important, too, since the overwhelming
28

1 consensus of opinion about the cause of the 1985 watermelon
2 problem, as well as with the several other problems discussed in
3 my February 3rd memo, was that it was misuse of the pesticide.

4 There's no question that aldicarb is a potent chemical,
5 but suspending use of the compound does not seem like an
6 appropriate response to a misuse problem. That has not been the
7 response dealing with other commonly used chemicals that may
8 cause acute health problems when misused. Let me just give you
9 some examples.

10 Each year about 2,000 children are poisoned by multiple
11 vitamins that contain iron, and a number of these children die.
12 Iron is a very potent poison; however, we're not proposing to ban
13 prenatal vitamins.

14 Another very potent chemical used in homes throughout
15 California is Drano. Drano contains sodium hydroxide, the
16 strongest caustic there is, and each year in California several
17 people are permanently disabled and a couple die from Drano.

18 Similarly, two products that are probably found in
19 almost every household in California, ammonia and bleach, are
20 also hazardous, especially when mixed together. Indeed, I've
21 personally treated more than a dozen people who have become very
22 ill, nearly fatal in at least two cases, when they mixed these
23 two liquids together, forming a mixture that produces very potent
24 chloramine gas.

25 Many such poisonings occur every year, yet we don't ban
26 these household cleaning agents.

27
28

1 The problem with all these chemicals and many others is
2 that -- is their misuse, which is typically inadvertent, although
3 sometimes intentional. Instead of banning these materials, we
4 try to teach the people who use them how to use them properly.
5 We develop safety measures, and we punish those who misuse them
6 intentionally.

7 So in view of the above things, the two questions that
8 especially concerned me while reviewing staff's recommendations
9 were:

10 What has been done to prevent misuse of aldicarb; and

11 What pesticides would be used, and what are their
12 potential adverse health effects and their data gaps if use of
13 aldicarb were suspended?

14 Unfortunately, staff did not consider these questions
15 before they made their recommendations regarding aldicarb. I do
16 not think this is adequate staff work.

17 So what about enforcement?

18 SENATOR PETRIS: Excuse me.

19 Would you mind an interruption or two, or would you
20 rather finish your statement?

21 DR. KIZER: I don't have much further to go, if that
22 would be all right.

23 SENATOR PETRIS: Okay.

24 DR. KIZER: As I understand it, the Department of Food
25 and Agriculture has already augmented its staff and budget in
26 order to intensify its enforcement activities, and they plan
27 additional increases next budget year.
28

1 I understand that they also are in the process of
2 increasing their laboratory support and implementing other
3 changes to provide better pesticide use monitoring and oversight.

4 Two other relevant facts that were stressed by the
5 Department of Food and Agriculture:

6 First, new statutes are now on the books that greatly
7 increase the penalties for misuse of pesticides. It is my
8 understanding from the management of the Department of Food and
9 Agriculture that they intend to vigorously use the new authority.

10 Similarly, they emphasize that since last summer,
11 there's a tremendously greater awareness amongst the agricultural
12 industry about the need for self-policing and strict adherence to
13 proper use of pesticides.

14 On discussing these things with the management of the
15 Department of Food and Agriculture, they gave me very strong, and
16 I mean very strong, assurances that these things will prevent
17 another episode such as occurred last summer.

18 The other relevant question which has to be addressed is
19 what pesticides would be used if use of aldicarb were suspended,
20 and what are their potential adverse health effects?

21 Unfortunately, essentially all of the possible
22 substitute pesticides for aldicarb have data gaps as large or
23 larger than aldicarb. And in some cases, the adverse health
24 effects may be worse. For example, some of them are suspected or
25 known carcinogens or teratogens.

26 To sum, then, the concerns about aldicarb have to be
27 weighed against concerns about the alternative pesticides, and I
28

1 am not convinced that the alternatives are really any better or
2 more safe than aldicarb.

3 Likewise, I am concerned about the total amount of
4 pesticides that are used in California, and the Department of
5 Food and Agriculture has advised me that a substantially greater
6 volume of pesticides would be used if the use of aldicarb were
7 suspended.

8 Now, the last question is why has EPA and/or other
9 states not suspended use of aldicarb?

10 The reasons appear to be because there are not adequate
11 substitutes for aldicarb for some crops, and that the safety of
12 the alternatives have not been adequately evaluated.

13 In conclusion, then, let me say that I agreed with four
14 out of the five of the staff's recommendations regarding
15 aldicarb, and I understand that the Department of Food and
16 Agriculture is complying with these recommendations.

17 However, I did not agree with the staff on the issue of
18 suspending use of the compound, because I did not think that they
19 had adequately evaluated the alternatives to using aldicarb.

20 This is a judgement call, and I understand that
21 reasonable and well-intentioned people may disagree about the
22 decision or the reasons behind it. This often happens for
23 matters of this nature.

24 However, I hope that it is clear that this is not a
25 capricious decision, and it was made only after careful
26 consideration of all aspects of the matter, something which I
27 felt my staff had not done.
28

1 SENATOR CRAVEN: Senator Petris.

2 SENATOR PETRIS: Thank you, Mr. Chairman.

3 As far as your qualifications, I might reiterate what I
4 said last time. I was impressed by your medical background,
5 especially in mental health -- excuse me, in public health, which
6 sometimes overlaps, unfortunately, and with the toxicology.

7 I want to go back to the same subject we covered before.
8 Your memo from which I read to you the last time was the second
9 memo which you described now, which was fairly strong. But then
10 we found out about the prior one, which was much stronger.

11 The first question I have is the difference between the
12 fear of abuse, which you very correctly described in relating
13 iron in the vitamins when given to children. I suppose you could
14 have given the classic example of aspirin that harms a lot of
15 people, and so forth.

16 It seems to me there's a basic difference between that
17 and something which your people describe as inherently dangerous
18 and subject to abuse or misuse.

19 The memo also described it as the most toxic substance
20 used anywhere in the United States.

21 Those two things kind of frighten me, so I guess the
22 question is: How do you weigh this? You've tried to explain it.
23 How do you weigh the problem of something that is inherently
24 dangerous -- it's the most toxic substance in use -- against the
25 delay in trying to evaluate the alternatives while the suspension
26 is going on or reevaluation?

27

28

1 I guess that's a difficult thing, but I need more
2 information on that.

3 DR. KIZER: The point --

4 SENATOR PETRIS: First of all, let me ask you: How long
5 has that been used, aldicarb? Is it something new?

6 DR. KIZER: It's been used for several years. I don't
7 know the exact time period, but it's not --

8 SENATOR PETRIS: Were they using something else
9 beforehand and found this was stronger? Do you know the history
10 of that?

11 DR. KIZER: Aldecarb is stronger, and I certainly stand
12 by the statement that aldicarb is indeed the most potent acutely
13 toxic pesticide that at least I'm aware of.

14 And that is -- and the reason I chose the examples, by
15 the way, because you raised this point about aspirin, aspirin's
16 not -- would not be analogous here. The reason that I used the
17 examples I did, iron is a very potent poison. Sodium hydroxide
18 is the most potent caustic there is. Chloramine gas is a very
19 potent pulmonary irritant. In other words, these are very potent
20 chemicals that I referenced as far as being the same sort of
21 thing, that it's their misuse that gets us into problems.

22 And I see the same in aldicarb. It does have the
23 potential for misuse, and I think that goes without saying, and I
24 certainly think Food and Ag would agree with that.

25 SENATOR PETRIS: You remember last week I told you I was
26 startled by what was in your second, weaker memo, without knowing
27 about the first one.

28

1 My reaction as a layman would have been why don't you
2 just ban it, period?

3 Now, the staff didn't recommend banning; it was the
4 suspension, which means a temporary termination of its use while
5 they check things out.

6 What's the difference between that and reevaluation,
7 other than continuing to use the product in one case and not
8 using it in the other?

9 DR. KIZER: Perhaps there was some imprecision in my
10 language there in that I should have used suspended, because the
11 information I have is that if it were suspended for reevaluation,
12 which may take anywhere from a year or two years to three or four
13 years -- EPA has had it under reevaluation now for nearly two
14 years -- that other pesticides would be used as alternatives to
15 that during that interval of time.

16 And the point that I was trying to make there is that
17 staff had not considered those alternatives. I think you have to
18 consider what the potential adverse health effects are of the
19 alternatives that would be used during this time of suspension.

20 SENATOR PETRIS: Let me go back again historically.

21 I understand aldicarb has been in use for some 15 years,
22 which takes it back to 1970. We got along without it for a long,
23 long time before that.

24 Were we using no chemicals at all for its particular
25 products before, or were we using something not as strong but
26 still doing some kind of a job? Do you happen to know?

27
28

1 DR. KIZER: I think that that -- I think that frankly
2 that question could be better answered by the Department of Food
3 and Agriculture. I would be in a better position to advise you
4 about the health considerations and not the agricultural uses of
5 the compound.

6 SENATOR PETRIS: Let me just peek at a fresh memo that
7 just came in.

8 We have a response, I guess, to Dr. Toby Jones.

9 Which department is he? Is he Food and Ag or yours?

10 DR. KIZER: I don't know the individual, so --

11 SENATOR PETRIS: Is Dr. Jones here? Mr. Van Nes.

12 CHAIRMAN ROBERTI: Please state your name.

13 MR. VAN NES: Yes, Mr. Chairman.

14 Hans Van Nes, Deputy Director of the Department of Food
15 and Agriculture.

16 SENATOR PETRIS: I have a memo here that I need some
17 clarification on which relates to what the doctor and I have been
18 discussing.

19 It's a report on aldicarb to Dr. Toby Jones, Acting
20 Chief of the Pesticide Registration Branch.

21 That puts it in your shop.

22 MR. VAN NES: Yes.

23 SENATOR PETRIS: Are you still there?

24 MR. VAN NES: Yes.

25 SENATOR PETRIS: It says, "DRS Reports on Aldecarb", and
26 it refers to one report regarding aldicarb food poisoning
27 consisting of a letter to Mr. Berryhill on the food poisoning
28

1 epidemic from the watermelon thing. That's a 14-page report, and
2 it refers to a second one --

3 MR. VAN NES: Is that a letter to Toby Jones or from
4 Toby Jones?

5 SENATOR PETRIS: To.

6 MR. VAN NES: From whom?

7 SENATOR PETRIS: From Van Cheney, Program Supervisor.

8 MR. VAN NES: Okay.

9 SENATOR PETRIS: It's dated December 30, 1985. And it
10 says:

11 "At your request, I went to the
12 Department of Health Services in
13 Sacramento to review drafts of two
14 documents that DHS is intending to
15 release soon. These consisted of a
16 letter to Clare Berryhill of approx-
17 imately 10 pages, and a report entitled
18 'Aldecarb Food Poisoning Epidemic' of
19 over 14 pages."

20 This doesn't have dates, so I don't know whether your proposed
21 memo of your Department was ten pages long, was it, the earlier
22 one in November?

23 DR. KIZER: It could have been that long. It was pretty
24 close to that.

25 SENATOR PETRIS: It may be the one that we're talking
26 about.
27
28

1 And it says at the bottom that catches my attention
2 here, after reviewing the two documents it says:

3 "If the document is released in its
4 present form it will probably adversely
5 harm, if not completely negate, our
6 ability to successfully prosecute misuse
7 of aldicarb that has occurred in the past
8 or that will occur in the future. If the
9 allegations are true, then there are
10 serious grounds to consider suspension or
11 cancellation for the same reasons."

12 I suppose that means cancellation or suspension of the use of
13 that.

14 Now, who has the final say? Is it Agriculture or
15 Health?

16 MR. VAN NES: The regulation of pesticides is housed
17 within the Department of Food and Agriculture, and registration
18 decisions are made by the Registration Branch under the direction
19 of Clare Berryhill, the Director.

20 Now, there's an Assistant Director and Associate
21 Director between the Director and this Pesticide Registration
22 Branch.

23 SENATOR PETRIS: Are any of them toxicologists?

24 MR. VAN NES: There are in that division of Pest
25 Management a number of toxicologists. I know they've been trying
26 to hire eight more as a result of your SB 950 legislation.

27 SENATOR PETRIS: You still can't find them?
28

1 MR. VAN NES: Well, they're finding them, but his shop
2 keeps hiring them away for some reason.

3 (Laughter.)

4 DR. KIZER: We can't fill our positions.

5 MR. VAN NES: They're hard to find. The good ones --

6 SENATOR PETRIS: His shop is the Health shop, and they
7 have the M.D.s, only two of which have his qualifications, one of
8 which is Dr. Kizer.

9 Shouldn't we have the medics in the Health Department
10 make the final determination on this kind of thing where it
11 directly effects health --

12 MR. VAN NES: Well --

13 SENATOR PETRIS: -- rather than the Agriculture
14 Department?

15 MR. VAN NES: Senator, you and I've discussed that issue
16 many times during --

17 SENATOR PETRIS: I just thought we'd go over it again.
18 We haven't done it for awhile.

19 MR. VAN NES: -- the last 15 years, and I think that
20 without any facetiousness, the attitude of the Department, the
21 attitude of the farming community is that his doctors in the
22 medical profession, I'm sure, want to be regulated. I think
23 they're probably pretty happy to be regulated by somebody who
24 understands the doctor business and understands the medical
25 profession and understands medicine.

26 And I think farmers want to be regulated by someone who
27 understands their problems.
28

1 Now, the way the State law is set up --

2 CHAIRMAN ROBERTI: So do lawyers --

3 MR. VAN NES: Right.

4 CHAIRMAN ROBERTI: -- but they may be losing.

5 MR. VAN NES: The Legislature has seen fit to go beyond
6 that and to say: Okay, you guys are the regulators, but you
7 shall take recommendations from the Department of Health Services
8 into consideration in making your decisions.

9 And that law is on the books, and there is -- we're
10 going to talk about these memorandums, there's a lot of work that
11 goes on at the staff level all the time on an ongoing basis
12 between my staff and his staff. And very few items come to our
13 attention like the aldicarb situation. But sometimes, one side
14 or the other side will elevate something and get a Director's
15 decision on it.

16 In this case it was elevated in both houses. It was
17 elevated in our Department and elevated in his Department.

18 SENATOR PETRIS: Generally speaking, the law gives, in
19 almost every chapter that I've been able to check, gives the
20 final word to your Department. At most it requires you to
21 consult.

22 And your Department, as you remember, fought very hard
23 against provisions I had in 950 --

24 MR. VAN NES: I would not disagree with that.

25 SENATOR PETRIS: -- to give doctors the final say.

26 MR. VAN NES: The regulatory authority is with the
27 Director of Food and Agriculture, but there is also
28

1 responsibility under the law that says the Director shall consult
2 with and says they shall make recommendations.

3 Now basically the law --

4 SENATOR PETRIS: You don't have to accept them.

5 MR. VAN NES: We don't have to accept them, but we --
6 I'll tell you what, as time goes on we're accepting more and more
7 of them.

8 SENATOR PETRIS: I'd like to get a list of those one of
9 these days.

10 SENATOR TORRES: So would I.

11 SENATOR PETRIS: Let me just remind you of the wording
12 in this particular part of the law. It says:

13 "The State Director of Health
14 Services shall have access to
15 mandatory health effects studies ..."

16 That's relating to 950,

17 "... and other health effects
18 studies on file in the Department
19 of Food and Agriculture ..."

20 And may, not shall:

21 "... and may, based upon the
22 determination of the State
23 Director of Health Services
24 provide advice, consultation
25 and recommendations concerning
26 the risks to human health."

1 That's the kind of language that's mealymouthed going through the
2 whole Code.

3 The only area where he has priority that I've been able
4 to find is in processed foods. Somewhere along the line in
5 processed foods, the tolerant levels the Director of Health
6 Services can overrule Ag and even conflict with the federal
7 statutes.

8 Now, I didn't ask you this just to go into the exercise
9 again. As you say, we've been through it a lot. But I wonder to
10 what extent in the doctor's own thinking this climate, you see,
11 the climate of subordination of his shop to your shop may have
12 affected someone's recommendation, someone's decisions along the
13 line to reduce, in addition to the good points you made, to
14 reduce the earlier recommendations from suspension to
15 reevaluation for an inherently dangerous product which is the
16 most toxic that we're using anywhere in the country.

17 I have a hunch that once you get into that environment
18 in the other shop, you can't help but feel it. You can't help
19 but go along with the flow. That's the policy, and that's the
20 statute.

21 MR. VAN NES: I'd like to respond to that.

22 I think that's a very fair question, and it really goes
23 to the heart, the crux of the matter that's at issue as to how we
24 do work together and how we are able to accomplish what needs to
25 be done in the public's interest. How he views his role, and how
26 we view our role and his role.

1 And I think that we recognize in the Department of Food
2 and Agriculture that we don't have the medical expertise and he
3 has. We have some, but we certainly don't have at our -- the
4 Director of Food and Agriculture, at his beck and call, the kind
5 of expertise that Dr. Kizer and the Department of Health Services
6 has.

7 And so, we go to them. We use them. We need them.
8 There's no question about it.

9 The problems that are coming to us, we have to have
10 their help to properly solve those problems, so we understand
11 that, and we don't disagree with that.

12 Now, what we would disagree with --

13 SENATOR PETRIS: You're still only talking about
14 consultation.

15 MR. VAN NES: But what I'm trying to suggest to you,
16 Senator --

17 SENATOR PETRIS: You can do that without statute. You
18 can call them; you can call the people in private practice; you
19 can call anyone that's knowledgeable --

20 MR. VAN NES: And we would.

21 SENATOR PETRIS: -- and consult them.

22 MR. VAN NES: I guess we're agreeing, because we would
23 without the statute.

24 SENATOR PETRIS: It just seems to me in the light of the
25 proliferation of these problems in the past year in particular,
26 that it might be time now for the Department and the industry,
27 the growers out there, to acquire that maturity that all human
28

1 beings aspire to, the wisdom of the ages, to give priority or at
2 least the final word to the doctors on that issue, on the health
3 issues. Not those that don't effect health, but any of those
4 issues where we're dealing with poisons that constitute a threat
5 either to the public at large, or the consumer, or the farm
6 worker, or the farmer himself, since it's a health issue, it
7 seems to me the health people ought to be making the final
8 determinations.

9 For one thing, it would get the Department off the hook
10 with your own constituency. You'd just shrug your shoulders and
11 say: Hey, that's a health decision; go talk to the doctors,
12 don't talk to us; it's not our baby.

13 MR. VAN NES: We just had discussions over here about
14 reorganization. And one of the issues there is what you do with
15 the Water Board.

16 And I can remember how various constituencies and the
17 water industry felt about any restriction of the Water Board's
18 authority. And there are questions, there are Water Board
19 questions, that are more Health Department questions than they
20 are Water Board questions. But those questions are still being
21 resolved at the Water Board.

22 SENATOR PETRIS: Okay, that's another area where we need
23 to improve it. I think we recognize that as a problem and we
24 ought to do something.

25 MR. VAN NES: I understand, but I -- I appreciate what
26 you're saying, but I think that you're not giving credit to the
27 point that I'm making that --
28

1 SENATOR PETRIS: Well, let me tell you why. I
2 acknowledge your point, and this is the end of it for me.

3 I've been fighting this battle every administration,
4 including Pat Brown's, since I got here. I had legislation under
5 Pat Brown's administration to shift the responsibility for health
6 matters to the Health Department. And the response has always
7 been the same: People sitting where you sit, and sitting where
8 Clare Berryhill sits, over the years have had the other viewpoint
9 that this is our baby, and it's our shop, and we don't want
10 anybody else messing around with it.

11 That's a very poor attitude. And I wonder how many more
12 people are going to have to get sick and die, and so forth, until
13 our growers, thanks to the chemical companies who are really
14 pushing them -- my fight isn't with the growers; it's with the
15 chemical companies that are manufacturing and peddling this stuff
16 -- how long is it going to take for us to make them realize that
17 we're dealing with human lives, and the basic ultimate
18 determination on the more acute problems -- not on every little
19 thing that comes along, but on the ones that really are affecting
20 our health in a serious way -- ought to be determined by the
21 doctors.

22 Doctor, wouldn't you like to have that authority in the
23 extreme -- not extreme, but in the important areas that we're
24 talking about? Shouldn't that be lodged with the doctors?

25 DR. KIZER: How did I answer that last time, two weeks
26 ago?

(Laughter.)

SENATOR PETRIS: If you answered it, I'll go back to the record.

DR. KIZER: I think we discussed it last time.

The real question here is that given the laws and the statutes that are in effect, the Department will administer those and that we will certainly do our job. And I guess it really is up to you guys if you're going to change the way that the house is organized.

SENATOR PETRIS: That's very nimble.

Let me just add my historical footnote that all through those years, I've been learning through the grapevine for every administration that doctors in your shop have pleaded with people in his shop only to be turned down, time after time. And that's not every single case, but it happens often enough. That's why I'm spreading the blame across the miles and across the years. It's prior to your administration by one, two and three times. It's also happened in the current administration.

We can't expose those people because they get in big trouble. They're jumping channels, and they're doing this and that. But they're concerned about health.

MR. VAN NES: I just know that it's many, many times better that coordination, that discussion staff to staff. They are getting input. Our people are accepting their input, and I think better things are happening.

CHAIRMAN ROBERTI: I guess maybe my question is more directed to you, Mr. Van Nes, than to Dr. Kizer, but nevertheless

1 the both of you: Mr. Berryhill indicated in the aldicarb
2 situation that -- I remember his words -- they were going to
3 throw the book at the people who violated the law and misapplied
4 aldicarb.

5 With that on everyone's minds, many of us went further
6 than we've ever gone for any other beleaguered industry and voted
7 for what strikes me as full reimbursement for watermelon growers
8 who were not -- who had their crops destroyed but were not
9 culpable parties.

10 It's now two-thirds or three-quarters of the year and I
11 don't know what books have been thrown at anybody.

12 It concerns me because, first you do have the
13 administration of what many of us believe to be a health
14 question. And we do try to concern ourselves with the economic
15 effects on growers, and we would expect at a bare minimum some
16 self-policing --

17 MR. VAN NES: I can speak to that.

18 CHAIRMAN ROBERTI: Right, by the industry and some
19 nudging by the Department. And I was encouraged when Mr.
20 Berryhill made his remarks, but I'm concerned right now that the
21 impression is business as usual.

22 But if you can speak to it and allay my fears, I'd be
23 glad to have that happen.

24 MR. VAN NES: Okay.

25 First of all, as a result of Mr. Berryhill's remarks and
26 work in this Legislature, we were the sponsors of and legislation
27 was carried, AB 1026, carried, passed the Legislature, signed by
28

1 the Governor, which really greatly increased the penalties that
2 the Director had to use in handling these sorts of things.

3 Now, the watermelon growers that were culpable in this
4 particular case, however, unfortunately for us, can't be
5 prosecuted under that law. They have to be prosecuted under the
6 old. And that means going after them on a misdemeanor charge, up
7 to a \$500 penalty, fine, and have to have proof beyond a
8 reasonable doubt.

9 So, what we did was go civilly against these growers.
10 The cases are -- were filed, I think, last week. I have our
11 attorney in the audience here. The cases were filed against the
12 three growers that we can prove illegally applied pesticides to
13 those watermelons.

14 We are going after them on each count, \$2500 plus \$500,
15 which will be \$3,000 per count. As I understand it from the
16 attorneys, once the case is filed and we get into the discovery
17 proceedings, the number of counts we expect to go up drastically.
18 And every violation that we can find, we are going to lay on that
19 violation a \$3,000 fine or civil penalty. If it's 100 violations
20 for a grower, it's going to be \$300,000. However many we can put
21 on.

22 CHAIRMAN ROBERTI: What constitutes a violation? Each
23 watermelon? I'm sure that's not the case.

24 What constitutes a violation?

25 MR. VAN NES: I'm over my head. Let's bring the
26 attorney in.
27
28

1 This is Victoria Gall from the Department. She's
2 handling the case, and I'll let her answer the question.

3 CHAIRMAN ROBERTI: Identify yourself.

4 MS. GALL: I am Victoria Gall. I am a staff counsel at
5 the California Department of Food and Agriculture.

6 CHAIRMAN ROBERTI: What constitutes a violation,
7 specifically in the case of the misuse of aldicarb on the
8 watermelons? What would constitute one violation?

9 MS. GALL: In this case we have a number of violations
10 of law. The violations, the primary violations, are violations
11 of use in conflict with labels. Illegally using it, aldicarb,
12 and in this case, essentially you pointed out, I doubt that any
13 judge would allow to charge on each watermelon. Essentially it
14 was each field where we found contaminated watermelons and
15 contaminated soil and contaminated foliage.

16 In one case, two growers, there were two watermelon
17 fields; and in another case there was a watermelon field and two
18 corn fields that we found contaminated soil and foliage in.

19 Also, as Mr. Van Nes indicated, what we did through our
20 investigation, we did a very extensive investigation. It
21 included dealer audits, grower record audits, et cetera, and we
22 found many, many different violations, including the failure to
23 turn in use report, failure to give notices of intent, storage
24 problems, failure to post storage, everything literally that we
25 could find we counted. Each one of those are counts.

26 Also, as Mr. Van Nes said, in one of our complaints --
27 and the way a civil complaint is worded, it's the knowledge that
28

1 you have at this time but with leave to amend -- and in one of
2 the cases, we were not -- the growers did not cooperate with us
3 in terms of providing information to us, and so what we expect to
4 find through our discovery process is many more violations. And
5 so in that case, with those particular growers, we expect that
6 the complaints will be much more substantial.

7 CHAIRMAN ROBERTI: These are just initial charges?

8 MS. GALL: Yes.

9 CHAIRMAN ROBERTI: And you're still working on the case?

10 MS. GALL: The discovery process should help us to
11 expand greatly when we get some more information from the
12 records.

13 CHAIRMAN ROBERTI: Thank you very much.

14 MR. VAN NES: I'd like to follow the rest of the
15 question, if I may, Mr. Chairman.

16 What have we done? Mr. Berryhill made a statement. Mr.
17 Berryhill himself has traveled up and down the state, and he's
18 spoken very forthrightly to growers, as have I. Both he and I
19 and George Gomes do most of the speaking up and down the state.

20 One of the things Clare's told us he wants us to say
21 everywhere we go to talking to growers is that this is a serious
22 problem. It's a problem for society; it's a problem for the
23 State and the Department; and it's a problem for growers.
24 Probably first and foremost it's a problem for growers.

25 Look what happened to the watermelon industry. That's
26 why you people passed that bill out.

27

28

1 The poor, hapless individuals who, through no fault of
2 their own, had to pay such a price for the wrong doings of three
3 people.

4 So what we're trying to tell those people is, there are
5 two responsibilities. In fact, Clare Berryhill put out a letter
6 in December of 1985, handed it to the Commissioners, and said:
7 Everybody that comes in here and gets a permit, you give that
8 farmer this letter from me.

9 This letter says to these farmers it isn't business as
10 usual. We both have some very serious responsibility here. I
11 intend to take mine seriously and I expect you to do likewise.
12 Mine is to put the enforcement people in the field and to cover
13 those enforcement areas properly, and your job is when you're
14 using pesticides, you follow those labels and you use them
15 properly. If you don't, when I found you, I have this new law
16 and I intend to use it.

17 CHAIRMAN ROBERTI: Is the Department of Health or the
18 Department of Food and Agriculture doing anything to research
19 alternatives to aldicarb?

20 MR. VAN NES: Yes, I can answer that.

21 With the reevaluation process, Dr. Kizer has given us a
22 memorandum, the February 3 memorandum, asking us to put it into
23 reevaluation, and we have agreed to do that. It's in there now.

24 When they go through reevaluation, these questions have
25 to be dealt with: What are the hazards of this material; can the
26 hazards be mitigated; what are the feasible alternatives; and are
27 they better alternatives than using this material.
28

1 Those are the kinds of questions that have to be
2 addressed and a public document has to come out of that, which
3 makes a finding with the necessary reasoning behind it to back it
4 up.

5 CHAIRMAN ROBERTI: Dr. Kizer, when you decided that you
6 were not going to go along with your staff's recommendation, and
7 I don't doubt your expertise -- but did you consult with any
8 other physicians, scientists?

9 DR. KIZER: As a matter of fact --

10 CHAIRMAN ROBERTI: Biologists, chemists, whatever?

11 DR. KIZER: As a matter of fact I did discuss it with a
12 couple of my other toxicology colleagues. And their perspective
13 on it was similar to what I've expressed here.

14 In other words, if you can't show that the alternatives
15 are better, you know you're dealing with an acutely toxic
16 compound, something where if you're going get sick, you're going
17 to get sick. It's not a carcinogen; it's not a teratogen. It's
18 something where, as I said, if you're going to get sick, you know
19 you're going to get sick, and with very rare exception, you're
20 going to get over it in a short period of time.

21 That's not to say that it's a benign compound; that's
22 certainly not the case.

23 The point is, though, that I think from a clinical
24 sense, it's better to have something of that nature than
25 something where you really don't know as much about what the
26 potential adverse health might be, particularly when they may be
27 long term consequences.
28

1 CHAIRMAN ROBERTI: Any other questions? Senator Petris.

2 SENATOR PETRIS: I forgot to ask Mr. Van Nes, what were
3 they using prior to '70 on things they now use aldicarb?

4 MR. VAN NES: You have that memo. I'll have to dig it
5 up here. Let me get to it.

6 It depends on the commodity that we're talking about.
7 There are alternatives.

8 SENATOR PETRIS: Can we go back to what they had before?

9 MR. VAN NES: Yes, we can go back to those, but when you
10 go back to them, you get to what Dr. Kizer's talking about and
11 what your SB 950 went to. You know, we have those data gaps. We
12 need to fill those data gaps, and so we have that whole issue
13 here.

14 Here's a list of the things that can be used on cotton.
15 Now, my staff tells me that there are a couple of areas where
16 there are really no viable alternatives. One is in the nursery
17 setting, in the nurseries, and the other one is in alfalfa seed,
18 thrypses and aphids on alfalfa. There really is no alternative.

19 In the other cases there are alternatives, but they
20 require three or four applications of pesticides instead of one,
21 and they don't do the job as well. So that's what you're up
22 against.

23 Now, the question is, while we're on the subject, and I
24 hadn't had a chance --

25 SENATOR PETRIS: That's three or four.

26 MR. VAN NES: The staff at Health said:
27
28

1 "This pesticide is inherently
2 dangerous."

3 Well, I think you could say that about just about any pesticide.
4 They are inherently dangerous if they are misused or abused.

5 So, our responsibility and our job is to see that aren't
6 misused and abused, and that's why we've put all of these things
7 into place.

8 SENATOR PETRIS: Well, the impression I get is they're
9 inherently dangerous even when you're using them properly.
10 They're just a dangerous substance.

11 You know, it's like carrying dynamite sticks around.
12 You can carry them gingerly, you know, in a bowl of cotton or
13 whatever, or you can just toss them in the air while you're
14 walking down the street. They're still inherently dangerous.

15 MR. VAN NES: Okay, but you see --

16 SENATOR PETRIS: That's what that means.

17 MR. VAN NES: What we have to watch for, we have to take
18 a look at the workers' safety problem. This is an acutely toxic
19 pesticide, so there's no question you have worker safety
20 problems, as was developed in the memorandum from Health
21 Services.

22 On the other hand, this is a systemic pesticide, and as
23 we know from the watermelon experience, you can make the
24 consumers sick, and that's another problem that we have to be
25 concerned about.

26 But when we're taking the workers' safety issue, what
27 about the chronic effects of the other pesticides, which are not
28

1 as obvious; they're much more subtle, but as you and I've
2 discussed, and I know you totally agree with me, they're there;
3 they're present, and they need to be dealt with.

4 And I guess what we're trying to say is that staff made
5 a judgement, and they looked at one-half of the equation,
6 aldicarb, without really looking at what are the implications for
7 the alternatives.

8 Now, reevaluation is the proper role. It's the proper
9 procedure because it will force both of us, our staff and his
10 staff, to look at aldicarb, tote up all of the adversities of
11 aldicarb, look at these alternatives and tote those up, and then
12 make a reasoned decision that has to be backed up with a finding.

13 SENATOR PETRIS: Did your shop reject the suspension
14 recommendation?

15 MR. VAN NES: Our shop would have rejected that if that
16 was in his final memorandum, and I can go into that and why we
17 would have rejected it.

18 SENATOR PETRIS: You didn't act on the preliminary?

19 MR. VAN NES: We did not act on it. We acted on the
20 February 3.

21 CHAIRMAN ROBERTI: Senator Torres.

22 SENATOR TORRES: Mr. Kizer, the statute which we've been
23 referring to today states specifically:

24 "The State Department of Health
25 Services shall participate in the
26 development of any regulations
27 adopted pursuant to this article.
28

1 Such regulations that relate to
2 health effects shall be based
3 upon the recommendations of the
4 State Department of Health Services.
5 The original written recommendations
6 of the State Department of Health
7 Services, any subsequent revisions
8 of those recommendations, and the
9 supporting evidence and data upon
10 which the recommendations were based
11 shall be made available upon request
12 to any person."

13 We made such a request, and we were denied the
14 information. Your lawyers indicated to us that the reason we
15 were denied the information that we had requested was because
16 they were working documents and mere drafts.

17 We had to issue a subpoena in respect to these
18 particular documents which we now have before us.

19 And I might refer to you an original draft which was
20 dated --

21 DR. KIZER: May I ask for a point of clarification?

22 SENATOR TORRES: Yes, certainly.

23 DR. KIZER: The reference that you cite, where does that
24 come from?

25 SENATOR TORRES: Food and Agricultural Code, Section
26 12981.

1 DR. KIZER: What is meant by Department of Health
2 Services recommendations?

3 SENATOR TORRES: I presume it means any recommendations
4 that you make to the State Department of Food and Agriculture,
5 because it's in the Agricultural Code, it's related -- it says:

6 "The Director shall adopt
7 regulations to carry out
8 provisions of this article ..."

9 Referring to the State Food and Ag Department in respect to
10 pesticides, reentry, time limits, handling of pesticides, hand
11 washings, storage.

12 DR. KIZER: I think the point there is, as you say, they
13 are any recommendations that I make to the Department of Food and
14 Agriculture, and those things were provided to you.

15 SENATOR TORRES: No, they were not, sir. We had to
16 issue a subpoena to obtain this information.

17 DR. KIZER: I don't mean to quibble on the words here,
18 but the recommendations I sent on February 3rd to the Department
19 of Food and Agriculture you were provided with.

20 SENATOR TORRES: That's my point, Dr. Kizer. You've
21 been very clever and nimble all day in that respect.

22 Now, how you characterize the two previous memorandums,
23 you characterized as work products, or at least your attorneys
24 and maybe you weren't aware of that either. Those memorandums
25 cite a very interesting pattern that Senator Petris pointed out
26 earlier.

1 That is, the initial responses that do away with
2 aldicarb, and your comment is: Well, I was following -- looking
3 at staff recommendations and felt I didn't agree with those staff
4 recommendations.

5 Is that correct?

6 DR. KIZER: That is correct. If you look at that
7 sequence, you will see that on my first cut of reviewing that,
8 that I did not agree with them.

9 SENATOR TORRES: I understand that. And throughout the
10 three memorandums, or rather the one which was called the
11 "Draft", dated 11/21/85, the other one which doesn't have a date,
12 but both have been directed to Clare Berryhill, and finally the
13 February 3rd one, which you were so gracious in giving our
14 committee and we appreciate your graciousness in doing so.
15 However, we really get a sense of what went on by reviewing these
16 memorandums.

17 In testimony before the Senate Rules Committee, Senator
18 Petrakis asked you:

19 "SENATOR PETRIS: Well, on the
20 aldicarb, your recommendation for
21 reevaluation, how did your people
22 arrive at that? Was it the one
23 dramatic episode? Was it a series
24 of things? What kind of studies did
25 they do to reach this conclusion?

26 "DR. KIZER: Well, I think the
27 usual process, for example, here is
28

1 that there clearly was a rather dramatic
2 incident last summer involving water-
3 melons that precipitated a more focused
4 look at this question. That was put in
5 the context of the historical concerns
6 or historical incidence. The literature
7 was reviewed, and as you can see on that
8 memo, there is a page to references in
9 literature that was reviewed and looked
10 at. And then there, of course, is internal
11 discussions on this and a recommendation
12 comes out of that."

13 Was the first draft ever given to Clare Berryhill, or
14 Hans, or anyone in the Department of Food and Ag?

15 DR. KIZER: Not so far as I know. That was the first
16 one that I saw.

17 SENATOR TORRES: Was the second draft of your
18 recommendations regarding aldicarb given to Hans Van Nes, or
19 anyone in the Department of Food and Ag for their input or
20 review?

21 DR. KIZER: I believe it was pursuant to their request
22 because of the legal issue here.

23 As was already noted today, this issue was raised from
24 both staffs up to the directorate. The concern was expressed
25 that there are things in there that were not supported by other
26 evidence and other things. They were -- indeed, if you read some
27 of those things, they are conjecture and speculation.
28

1 And the point was that they would like to look at these
2 to see if there were things that were not founded and that might
3 jeopardize the legal case that they were pursuing.

4 SENATOR TORRES: So, you did have discussions regarding
5 the second draft memorandum but not the first with the Food and
6 Ag Department?

7 DR. KIZER: I believe that's correct.

8 SENATOR TORRES: Let's move away from conjecture. Let's
9 move away from conclusions, which I respect your qualifications
10 and I do mean that sincerely in terms your own health
11 qualifications and your commitment to the health care field.

12 But let's deal with the issue of toxicity. Memorandum
13 Number One says:

14 "The two still births occurring after
15 maternal aldicarb illness make it
16 imperative that this information be
17 developed prior to further use of
18 aldicarb."

19 Summary of Toxicological Concerns. This is the first draft:

20 "Our primary concern is that aldicarb
21 is a systemic pesticide of such extreme
22 toxicity that it is capable of causing
23 poisoning of potentially fatal severity
24 to consumers of contaminated produce.
25 Few registered pesticides have this

1 potential. We feel aldicarb is inherently
2 unsafe for use in California because of
3 its high potential for misuse and abuse."

4 Do you agree with that statement or not?

5 DR. KIZER: I agree with parts of it. I think that
6 there's language similar to that in the memo that went.

7 SENATOR TORRES: Similar but not as strong.

8 Memo Number Two:

9 "The two still births that occurred
10 after maternal aldicarb illness this
11 past summer underscore the need for
12 this information to be developed."

13 Summary in Memorandum Number Two:

14 "The primary concern is that aldicarb
15 is capable of causing severe poisoning
16 even potential fatalities in consumers
17 of contaminated produce. Few registered
18 pesticides have this potential. This is
19 further complicated by aldicarb's high
20 potential for misuse and abuse."

21 Do you agree with that statement?

22 DR. KIZER: There are things in there that I agree with,
23 yes.

24 SENATOR TORRES: All right. Now let's look at the final
25 draft, which was the letter which was given to Mr. Berryhill, at
26 least you indicate that it was sent to Mr. Berryhill and I
27 presume it was:
28

1 "The two still births that occurred
2 after maternal aldicarb illness this
3 past summer underscore the need for
4 this information to be developed.

5 Summary of Toxicological Concern:

6 "The primary concern is that aldicarb
7 seems to be capable of causing severe
8 poisoning at very small concentration,
9 e.g., at levels that might be found
10 with contaminated produce. Few regis-
11 tered pesticides have this potential."

12 Why, from the first memorandum to the second memorandum
13 and to the third memorandum, was the strength and the
14 underscoring regarding the two still births so mediated, so put
15 down in a very almost a neutral statement?

16 Was it because you had conversations with Food and Ag,
17 and they said: This is too strong of a statement to make
18 regarding the two still births?

19 DR. KIZER: No.

20 SENATOR TORRES: Or was it because of scientific data
21 that indicated to you between the first draft, the second draft,
22 and finally the third draft that aldicarb wasn't as bad as you
23 initially indicated in the first draft?

24 DR. KIZER: No, it was not because of conversations with
25 Food and Ag. And by the same token, it was because there was not
26 scientific evidence necessarily to support all those things.
27
28

1 And I agree, some of it's just editorial. Just
2 different manners of writing. And you'll see probably changes
3 that are not too dissimilar to that in other places in the memo.
4 And that has to do, I suppose, with the -- I'm used to writing
5 for professional journals and a lot of the verbiage in there is
6 not what I would view as appropriate in a document of this nature
7 in any form.

8 SENATOR TORRES: I'm sorry, but I do not consider
9 editorial this comment when you say in your first draft that:

10 "It's imperative that this inform-
11 ation be developed prior to further
12 use of aldicarb."

13 To your third memo, which you suggest is editorializing and I
14 suggest it may not be:

15 "The primary concern is that aldicarb
16 seems to be capable of causing severe
17 poisoning at very small concentrations."

18 "Seems to be" and "we ought to determine just what the impact is
19 on children and maternal cases" doesn't seem to be
20 editorializing.

21 DR. KIZER: That's an important point. And that goes
22 back to the fundamental question here, that are the compounds
23 that aldicarb might be replacing? Are they better? Can you tell
24 me whether they're better? Since we know that a number of those
25 are teratogens that cause birth defects.

26 SENATOR TORRES: I wasn't hired. I was elected to be a
27 Senator, not to be a doctor. I don't have that expertise.
28

1 DR. KIZER: And that's, I guess, what it comes down to,
2 that that's a professional judgement that I do not feel that the
3 strength of the data supported their verbiage.

4 SENATOR TORRES: Well, it seems on December 6th, 1985,
5 your own medical toxicology department, Mr. Bob Peterson, Acting
6 Branch Chief, received a memorandum from the Food and Ag
7 Department --

8 MR. VAN NES: Wait a minute, that's my medical
9 toxicology branch.

10 SENATOR TORRES: Yes, yes, you're right, absolutely.
11 I'm sorry.

12 And he referred a letter here, which I believe was
13 referred to earlier, and that is a letter recommending that all
14 use of aldicarb be suspended:

15 "We feel aldicarb is unsafe for
16 use in California."

17 A DHS staff member commented that:

18 "Assessing the impact of cancellation
19 or suspension seem more properly in the
20 CDFA jurisdiction."

21 And that's really the key issue here.

22 And I know, Hans, you've talked about it before, and I
23 know Senator Petris has been a leader in this area. And I know I
24 have. I've seen it from both ends: farm worker perspective, the
25 grower perspective, and the consumer perspective.

26 But it comes down to who's really making the decision,
27 Dr. Kizer, with respect to health issues? Is it Hans Van Nes and
28 his Department? Or is it you?

1 Because that's the crucial issue here before us, at
2 least on this issue, as I see it. We've given you statutory
3 authority to make recommendations to the Department of Food and
4 Ag, yet when economic concern of agribusiness, and I'm concerned
5 about agribusiness because it is our number one industry, but
6 when you balance that against health concerns, it seems that the
7 health of Californians and the two children that were involved in
8 the still births, and the mothers that were involved, and the
9 families that were involved, are getting short changed.

10 DR. KIZER: They're not getting short changed if you can
11 tell me that the compounds that would be used instead would not
12 result in the same problem.

13 SENATOR TORRES: No, sir. What I'm saying is that your
14 own recommendation in your first draft was that information be
15 developed prior to further use of aldicarb.

16 DR. KIZER: I don't think I ever made that
17 recommendation.

18 SENATOR TORRES: I'm sorry. You are the Director of the
19 Department of Health Services?

20 DR. KIZER: Is that the recommendation that's in the
21 February 3rd memo?

22 SENATOR TORRES: No, sir. That's the recommendation
23 which was the draft which you said got nowhere other than inside
24 your office.

25 And I'm asking you what made you change your mind
26 between this draft that the final letter to Berryhill?

27

28

1 DR. KIZER: I think that that's been the subject of the
2 prior 30 minutes or so.

3 SENATOR TORRES: No, sir. The subject that I was
4 listening to, maybe we were in two different rooms, but the
5 subject that I thought I was listening to was why aldicarb was
6 not totally banned in California as a result of this incident.

7 And you argued, and I have to take your word for it
8 because you're the expert and I'm not, that there were other
9 alternatives that perhaps were more onerous.

10 That's not what I'm discussing here.

11 What I'm discussing is why, in one recommendation, which
12 as you suggest was internal and Hans and his folks at DFA never
13 saw this, suggest that information be developed prior to further
14 use of aldicarb? In other words, why is it in one memorandum you
15 talk about the impact on child births and maternal problems, and
16 say that we ought to at least look very carefully before we
17 extend further use of it, not total suspension and not forever,
18 not from this day forward, but temporarily until we have more
19 information?

20 Why is it you changed that recommendation to the third?
21 What went on in your thinking processes to do that?

22 DR. KIZER: Maybe we are having some communication gap
23 here, because that is indeed the point that I thought I made,
24 that if you suspend it and put it -- if you put it in
25 reevaluation and suspend it, it's going to be suspended for some
26 time, and at least all the information that I have gotten from
27 the Department of Food and Agriculture is that other compounds
28 would be used during that interval.

1 And that gets us back to the basic point as to whether
2 those compounds are better, safer, less likely to cause adverse
3 health effects, if aldicarb is used properly, than aldicarb.

4 SENATOR TORRES: A Department of Health Services staff
5 member commented that:

6 "Assessing the impact of cancellation
7 or suspension seem more properly to be
8 in the California Department of Food and
9 Agriculture's jurisdiction."

10 Not that there was a health problem. Not that there
11 were other alternatives that were more onerous, but "seems to be
12 more properly in the CDFA's jurisdiction."

13 Why?

14 DR. KIZER: I'm sorry, who made that comment?

15 SENATOR TORRES: This is a memorandum from Food and Ag,
16 Kathy Bonnetti, to Mr. Bob Peterson.

17 MR. VAN NES: That's not his. He doesn't have to
18 respond to that.

19 DR. KIZER: That's new information.

20 SENATOR TORRES: No, sir. It's not. It's dated
21 December 6, 1985, and it's not from a member of your staff, which
22 is the quote I'm referring to, Hans, which is why I addressed the
23 question, I though appropriately, to --

24 MR. VAN NES: Could we see the memos so we know what
25 we're talking about? Would that be appropriate?

26 CHAIRMAN ROBERTI: In the meantime, while you're
27 receiving that memo, one of the witnesses that I've asked to wait
28

1 has been waiting and waiting, and he has to leave. I hate to
2 have him wait, so we're going to change the topic somewhat.

3 Mr. Johnston, and then we'll return to the questions of
4 aldicarb.

5 Would you please come forward and identify yourself.

6 MR. JOHNSTON: Yes, thank you, Senator.

7 I'm Brian Johnston of the California Pro-life Council.

8 The Pro-life Council's actually prepared to support Dr.
9 Kizer. We do have some questions, though.

10 First of all, before I even get into that, I'd like to
11 just say that I empathize with Dr. Kizer in his having to deal
12 with a plethora of issues.

13 The issue that we are concerned about is the Governor's
14 position on the Office of Family Planning and the use of the
15 Office of Family Planning funds for abortion or promoting
16 abortion.

17 And also in light of the recent temporary appointment of
18 Dr. Gregory, who has expressed ardent support for the abortion
19 position.

20 I was wondering if Dr. Kizer sees any conflict in
21 representing the Governor's wishes in executing his duties?

22 CHAIRMAN ROBERTI: Dr. Kizer.

23 DR. KIZER: May I just ask as a point of order here?

24 Shall I respond to the --

25 CHAIRMAN ROBERTI: I guess. We've done it on other
26 ones. We might as well do it on this one.

27

28

1 DR. KIZER: The answer is very simple and very straight
2 forward, in that we support the Governor's position on this
3 issue, and anyone who is appointed to oversee that area in the
4 Department will support the Governor's position.

5 CHAIRMAN ROBERTI: Very good, thank you.

6 MR. JOHNSTON: Thank you.

7 CHAIRMAN ROBERTI: Senator Torres.

8 SENATOR TORRES: Thank you, Mr. Chairman and members,
9 for being patient.

10 There was a memorandum that was issued January 16th,
11 1986, Dr. Kizer, and it was from the Department of Food and Ag by
12 Sewell Simmons, Pest Management Specialist, Pest Management
13 Analysis and Planning Program, to a Mr. Ronald Oshima, who is a
14 Branch Chief for Environmental Monitoring and Pest Management.

15 Do you know any of those two people?

16 DR. KIZER: No, I've never heard of them.

17 SENATOR TORRES: Hans, you know these two individuals;
18 don't you?

19 MR. VAN NES: I know one of them.

20 SENATOR TORRES: All right.

21 Well, Sewell Simmons, in his letter, said:

22 "It must be concluded that except

23 for the situations mentioned above ..."

24 where he refers to where aldicarb should be used, which is
25 basically cotton, sugar beets and potatoes:

26 "... a strong defense for aldicarb

27 use based upon pest management need
28

1 cannot be made in light of the number
2 of feasible alternatives. The alter-
3 natives will be used differently than
4 aldicarb and more applications will
5 undoubtedly be necessary; however,
6 effective pest management will be
7 attainable without aldicarb. Pest
8 management may actually be improved
9 if prophylactic aldicarb treatments
10 are not applied on a routine basis.

11 "It is our recommendation that
12 aldicarb use be retained in the non-
13 food commodities, which include seed
14 alfalfa, nursery stock including fruit
15 and shade trees, and ornamentals."

16 MR. VAN NES: I think I have that memorandum.

17 SENATOR TORRES: Were you aware --

18 SENATOR MELLO: Mr. Chairman, a question here.

19 All of us have problems. Mine is, my wife and I moved
20 into a hotel last night, and we finally went back to our home
21 because of the rise in the American River down at Campus Commons,
22 and she's home alone, and I promised her I'd be home at 5:30.

23 I would like to recommend that we put the hearing over
24 for a week, unless we can resolve it in the next five minutes or
25 so.

26 CHAIRMAN ROBERTI: Let's see. We're open to discussion.

27 SENATOR PETRIS: I think it's --
28

1 SENATOR TORRES: I can appreciate Senator Mello's
2 comment because I was in a hotel last night, too. I couldn't get
3 into my house.

4 SENATOR PETRIS: I think it's a fair request. We've got
5 some emergencies around, and it would give us an opportunity to
6 get whatever information we've requested from staff back on the
7 other issue so we can wind it up. The next hearing should be
8 very brief compared to today.

9 CHAIRMAN ROBERTI: The Chair recognizes Senator
10 Doolittle.

11 SENATOR DOOLITTLE: Mr. Chairman, we've spent four, five
12 hours going over this today. Going into another hearing is -- I
13 just can't imagine prolonging this any longer.

14 It seems this line of questioning is pretty well
15 exhausted itself. I mean, Dr. Kizer's hired to be the senior man
16 in the Department and to refine the recommendations of his staff.
17 I know I have to refine the recommendations of my staff. They
18 recommend I vote one way, and I want to vote the other.

19 So, that's why he's there. He's paid to do that. And
20 nothing that's been elicited in the last hour or so seems
21 particularly startling to me. It seems like he's been just doing
22 his job.

23 Why don't we conclude the questioning and vote him up or
24 down?

25 SENATOR KEENE: On that point, Mr. Chairman.

26 CHAIRMAN ROBERTI: I take it that Senator Craven's
27 sentiment as well?
28

1 SENATOR CRAVEN: Yes, I was going to make that motion.

2 CHAIRMAN ROBERTI: Senator Keene.

3 SENATOR KEENE: I have a separate line of questioning
4 that should take about 15 minutes that touches, I believe, on
5 some very vital considerations concerning the confirmation of Dr.
6 Kizer.

7 I hesitate to subject the Committee to anything further
8 either tonight or another meeting, but frankly, I believe that
9 all the issues ought to be addressed.

10 This position is simply too important for us to put our
11 stamp of approval on until we're really sure that things are
12 going to be taken care of that need attention.

13 I would hate to have the public come back at us later on
14 and say: Hey, you didn't even ask these questions of the
15 Director of Health when you had an opportunity to do so.

16 I realize how difficult it is, but I would suggest we,
17 if necessary, come back next week and at least have the brief
18 hearing that might be necessary to do that.

19 It's also why I so strongly --

20 CHAIRMAN ROBERTI: What is our calendar? Maybe if we
21 did this, we could do it before Wednesday. Just to take up Dr.
22 Kizer alone. Let me check the schedule.

23 We could possibly schedule it for Monday after the Floor
24 session.

25 Then the hearing on Dr. Kizer, without objection --

26 SENATOR DOOLITTLE: May I raise a point?

27 CHAIRMAN ROBERTI: With noted objection, I should say.
28

1 Yes, Senator Doolittle.

2 SENATOR DOOLITTLE: I don't think we should go over any
3 of the ground that's been covered today. And I would expect the
4 hearing to be fairly brief.

5 CHAIRMAN ROBERTI: I agree. I don't think it will be
6 too long. There's some questions still on aldicarb. There are
7 some questions Senator Keene has.

8 SENATOR KEENE: Relating to the regulation of hazardous
9 wastes above and beyond the incident at Operating Industries.

10 CHAIRMAN ROBERTI: And I would like, if we're going to
11 go until Monday, to have a representative of the EPA Regional
12 Office in San Francisco come address us.

13 SENATOR DOOLITTLE: Are we going to reopen the Operating
14 Industries case then?

15 CHAIRMAN ROBERTI: Only to as limited extent as we can,
16 but I would think that that's important.

17 SENATOR DOOLITTLE: I think we're talking about another
18 six hours on Monday.

19 CHAIRMAN ROBERTI: I appreciate your point, Senator, but
20 I doubt if the Regional Office would be in an advocacy position
21 or care too terribly much as to what happens with the
22 confirmation, one way or the other. I think that their position
23 has been explained second-hand, third-hand, and I don't think it
24 would hurt for us to find who the proper person is in that office
25 to speak as to what went on in their decision making processes if
26 they wanted to list the two waste sites in Monterey Park.

1 And the toxic waste issue that Senator Keene has raised,
2 and the continuation of the aldicarb question, which I think were
3 almost finished, and it will not be opened to any other issues.

4 The Rules Committee will only meet on Dr. Kizer on
5 adjournment on Monday.

6 Hearing no objection, such will be the order.

7 (Thereupon this portion of the Senate
8 Rules Committee hearing was terminated
9 at approximately 6:35 P.M.)

10 --oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

21st day of February, 1986.


EVELYN MIZAK
Shorthand Reporter

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1986
no. 3

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA
MONDAY, FEBRUARY 24, 1986
11:00 A.M.

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16 MONDAY, FEBRUARY 24, 1986

17 11:00 A.M.

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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

APPEARANCES

MEMBERS PRESENT

1 SENATOR DAVID ROBERTI, Chairman

2 SENATOR WILLIAM CRAVEN, Vice-Chairman

3 SENATOR JOHN DOOLITTLE

4 SENATOR HENRY MELLO

5 SENATOR NICHOLAS PETRIS

6 STAFF PRESENT

7 CLIFF BERG, Executive Officer

8 PAT WEBB, Committee Secretary

9 RICK ROLLENS, Consultant on Bill Referrals

10 NANCY MICHEL, Consultant on Appointments

11 ALSO PRESENT

12
13 DR. KENNETH KIZER, Director
Department of Health Services

14 SENATOR BARRY KEENE

15 SENATOR GARY HART

16 WILLIAM MARLIN, Staff Attorney
17 Department of Health Services

18 MARILYN O'ROURKE, Mayor
City of Benicia

19 HANS VAN NES, Chief Deputy Director
20 Department of Food and Agriculture

21

22

23

24

25

26

27

28

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: The next item on the agenda is Governor's Appointee appearing today, Dr. Kenneth Kizer, Director of the Department of Health Services.

Dr. Kizer, we left off last Wednesday, I guess, with a few unanswered questions.

I asked the staff of this Committee to obtain for us from the Environmental Protection Agency, San Francisco Office, a statement as to their position on the northern portion of Operating Industries dump site in Monterey Park, California. I would just officially for the record like their response to me to be written in to the record:

"Dear Mr. Roberti:

"I am writing in response to your letter of February 20, 1986 in which you requested specific information regarding the Operating Industries, Inc. site in Monterey Park, California.

"1. What is the position of the Regional office on the site?

"Region 9 and EPA Headquarters have the same position on the site. That position was set forth in October 1984, when the Agency proposed in the Federal Register that the entire Operating Industries site, north and south parcels,

1 be included on the National Priorities
2 List. The Agency's final decision will
3 be made in March 1986.

4 "EPA's reasons for proposing to list
5 the north parcel as part of the site are:

- 6 ° The north and south parcels were
7 owned and operated by the same people
8 throughout most of the site's history.
- 9 ° The data available for a limited
10 portion of the north parcel indicate
11 elevated levels of some contaminants.
- 12 ° More importantly, there is not enough
13 data available to conclude that the
14 north parcel does not present an
15 environmental or public health risk.

16 "It is equally important to understand
17 what EPA's position is not:

- 18 ° EPA has never opposed the sale of
19 the north parcel.
- 20 ° EPA has never said that the north
21 parcel is as serious a risk as the
22 south parcel.
- 23 ° EPA has never said that the north
24 parcel could not be cleaned up prior
25 to development.

26 "2. Has the Regional Office made any
27 recommendations on the inclusion of the 45
28 acres in question?

1 "As stated above, Region 9 and EPA
2 Headquarters have the same position on the
3 site. Therefore, Region 9's recommendations
4 are reflected in the Agency's proposal in
5 October 1984 to include the entire Operating
6 Industries site on the National Priorities
7 List.

8 "3. Is there adequate information on
9 the site to delist any portion or all of the
10 45 acres?

11 "As stated above, the data available
12 is insufficient to conclude that the north
13 parcel is not an environmental or public
14 health risk. EPA will be collecting more
15 data on the site through a Remedial Invest-
16 igation and Feasibility Study in order to
17 make the best technical decision. At this
18 time, EPA has not made the decision either
19 to list or to exclude any portion of the
20 Operating Industries site.

21 "I hope that this adequately responds
22 to your request.

23 "Sincerely,

24 "JUDITH E. AYRES

25 Regional Administrator"

26 CHAIRMAN ROBERTI: In essence what it states is that
27 EPA's reasons for proposing to list the north parcel as part of
28 the site are:

1 "°The north and south parcels were owned
2 and operated by the same people throughout
3 most of the site's history.

4 "°The data available for a limited portion
5 of the north parcel indicate elevated levels
6 of some contaminants.

7 "°More importantly, there is not enough data
8 available to conclude that the north parcel
9 does not present an environmental or public
10 health risk."

11 They also go on to indicate:

12 "It is equally important to understand what
13 EPA's position is not:

14 "°Epa has never opposed the sale of the
15 north parcel.

16 "°EPA has never said that the north parcel
17 is as serious a risk as the south parcel.

18 "°Epa has never said that the north parcel
19 could not be cleaned up prior to develop-
20 ment."

21 Most of those points were brought out during the
22 testimony. I think the only point maybe that I'd like to ask you
23 on is, you indicated in your testimony that you felt that the
24 north parcel could not be cleaned up prior to development if it
25 was on the Superfund list.

26 I tend to think that in reading what they are stating is
27 that the State, if it chose, even if it's on the Superfund list,
28 could begin to clean up the north parcel.

1 Is that correct?

2 DR. KIZER: That is not correct per my understanding.
3 And the reason is that everything I have been told is that the
4 developer would not proceed with developing it if it were on the
5 Superfund.

6 Indeed, I am unaware of any development that has
7 occurred on any Superfund site, and I think the reasons are
8 fairly understandable.

9 CHAIRMAN ROBERTI: Thank you.

10 I think we were in the midst of questioning on the
11 aldicarb issue, especially in regard to its continued use, and
12 specifically the use in the watermelon crisis of last year.

13 Senator Keene, were you in the process of asking
14 questions at that time?

15 SENATOR KEENE: Not on aldicarb. I was about to begin
16 questions on --

17 CHAIRMAN ROBERTI: The only question I have on aldicarb
18 is a comment by Mr. Magee, which I grant is not your comment.
19 Mr. Magee's the Associate Director of Food and Agriculture, who
20 indicated in a Sacramento Bee article, written over the last
21 couple of days, that:

22 "There are numerous alternatives
23 to aldicarb in all but two pesti-
24 cides uses, 'and these are rela-
25 tively minor,' one memo said.

26 "While that might be true,
27 Magee said, alternatives to aldi-
28 carb might cost growers more."

1 Now, I grant that that's a truncated statement of a
2 probably more lengthy position, I would hope, of Mr. Magee.

3 To what extent does the cost of a given pesticide enter
4 into the Health Department's decision making process?

5 DR. KIZER: None.

6 CHAIRMAN ROBERTI: So, Mr. Magee's opinion in no way
7 reflects the position of the Health Department?

8 DR. KIZER: That is correct.

9 CHAIRMAN ROBERTI: Fine.

10 Senator Keene.

11 SENATOR KEENE: Thank you very much, Mr. Chairman.

12 Dr. Kizer, are you familiar with the I.T. Benicia waste
13 disposal facility?

14 DR. KIZER: I am aware of their existence.

15 SENATOR KEENE: And they're operating under an interim
16 status document issued by the Department of Health somewhere
17 around 1981?

18 DR. KIZER: I believe that's correct.

19 SENATOR KEENE: You're aware that a number of
20 modifications have been made at the I.T. Benicia facility over
21 the past year?

22 DR. KIZER: That's my understanding that they are trying
23 to upgrade their ponds to meet EPA requirements.

24 SENATOR KEENE: The modifications are as follows: the
25 emptying and capping of several ponds because of contamination
26 problems and leakage problems in connection with those ponds; the
27 construction of five new ponds; the excavation of several ponds
28

1 in the center of the facility and the creation of a new landfill
2 area covering approximately 18 acres of land, which I.T. says it
3 plans to expand to a total capacity of over 20 million cubic
4 years covering over 118 acres; lining of the new landfill area
5 and installation of drainage and leachate collection systems.

6 My point is not to have you acknowledge that these are
7 in fact the changes that I.T. has made, but I doubt that there's
8 any dispute that these are approximately the changes that I.T.
9 has made, and yet they continue under interim status.

10 Now, as I read Section 25200.5, it reads:

11 "Any person who desires to continue
12 use or operation of a hazardous waste
13 facility ..."

14 and this is a Class I toxic dump site; it receives the highest
15 category of hazardous wastes,

16 "... pending the review and decision
17 of the Department on a permit applica-
18 tion may be granted interim status by
19 the Department provided that the person
20 has made application for permit pur-
21 suant to Section 25200."

22 Then it says, and this is the critical part:

23 "(b) The person operating under an
24 interim status pursuant to this section ..."

25 Which I.T. is,

26 "... shall not do any of the following
27 acts:"
28

1 Number Two is:

2 "Employ processes not described in
3 the permit application"

4 and Number Three is:

5 "Make substantial modifications or
6 additions to the facility."

7 Would you say that these are substantial modifications
8 or additions?

9 DR. KIZER: As I understand what is occurring at that
10 site and the agreement that has been reached between the facility
11 and the County, is that they are not pursuing any expansion or
12 addition to their capacity or what they handle until they have
13 completed an Environmental Impact Report, but that they are
14 making some improvements on their facility. They're lining some
15 of their ponds; they're trying to make them more environmentally
16 safe within their existing use permit or uses that are permitted
17 under their current authorization.

18 You raise a number of legal points there, and I do have
19 counsel here that may be able to respond to some of those
20 specific points related to the statute sections that you
21 referenced.

22 SENATOR KEENE: Is it the position of your Department,
23 and you can certainly call counsel if you wish to, but is it the
24 position of your Department that the emptying and capping of
25 ponds because of contamination problems, the construction of five
26 new ponds, and excavation of several new ponds covering over 18
27 acres, which I.T. says it plans to expand to over 118 acres to a
28

1 total capacity of over 120 million cubic yards, the lining of the
2 new landfill area, the installation of drainage and leachate
3 connections -- these are not substantial modifications?

4 DR. KIZER: Well, I am not close enough to the specific
5 things that are authorized in their current interim status
6 document and what they're currently authorized to do to say
7 whether those are within what they're authorized to do or not,
8 having not been prepared to address this subject.

9 If counsel is in a position to address that, then I
10 think it would be worthwhile for him to come forward and speak to
11 that.

12 SENATOR KEENE: Your Department has known about the
13 dispute over the modifications being made, the amount of dirt
14 moved, the digging of a 36-foot deep trench in the center of the
15 facility. Your Department has known about this for a
16 considerable period of time now.

17 Either these are not modifications, or they're not
18 substantial, because law says you can't do it under interim
19 authority.

20 Now, if you wish to call your counsel, that's fine.

21 DR. KIZER: Mr. Chairman, would that be acceptable?

22 CHAIRMAN ROBERTI: Yes.

23 SENATOR KEENE: But I suggest to you that you appear to
24 the ordinary reader of the meaning of these words to be in
25 violation of the law.

26 DR. KIZER: Well, I think that because it does involve
27 legal issues here, it would be worthwhile to have counsel address
28

1 this, because it was my understanding that indeed the only thing
2 that is occurring there is to make this more environmentally
3 sound. They would not be doing anything that would be construed
4 as expanding their capacity, et cetera.

5 SENATOR KEENE: This statute does not talk about more
6 environmentally sound or less environmentally sound; it talks
7 about substantial modifications, and it disallows them. So
8 therefore the position must be either that these are not
9 modifications or not substantial, and I'd like to find out which
10 it is.

11 MR. MARLIN: Okay, my name is William Marlin. I'm staff
12 counsel with the Department of Health Services.

13 About the factual matters, I'm afraid my main
14 information is hearsay.

15 It is my understanding, speaking with people in our
16 Emoryville office, regional office, that the situation is such
17 that I.T. Benicia submitted an application, which is called a
18 Part B, EPA-type application, for a final permit. That entailed
19 the very modifications that the Senator mentioned; however, to my
20 knowledge the only modification that has been approved at this
21 time is the relining of the ponds, as was mentioned.

22 SENATOR KEENE: And the movement of an enormous quantity
23 of dirt, and the digging of a trench in the center of the
24 facility, some 33-36 feet deep.

25 These are not modifications or not substantial
26 modifications?
27
28

1 MR. MARLIN: Well once again, these are certainly
2 modifications. It is not a movement of any hazardous wastes at
3 this time.

4 SENATOR KEENE: It is not the movement of hazardous
5 wastes? What is the basis upon which you say that?

6 That dump has been in existence since 1967. It's taken
7 all kinds of wastes. They're moving contaminated earth, and you
8 say they're not moving hazardous wastes.

9 MR. MARLIN: What I am saying is that the only
10 modifications that are in progress at the moment, to my
11 knowledge, is the relining of several ponds.

12 This does not increase the design capacity or the
13 treatment at the facility. Therefore, under our regulations,
14 which are at 22 Administrative Code, Section 66389 --

15 SENATOR KEENE: Please address the laws that this
16 Legislature has passed and said under interim status authority
17 you may not do the following, make substantial modifications or
18 additions.

19 MR. MARLIN: That is correct. As I understand the
20 Legislature's intent in passing this, this was substantially
21 modeled on the federal RCRA program in the use of its terms.

22 What we have done is taken federal regulations regarding
23 the interim status issue, and we have enacted that into
24 California law, which is reflected in the section that I just
25 mentioned.

26 So, this section entails --
27
28

1 SENATOR KEENE: The section doesn't mean what it says?
2 It means something else other than what it says?

3 It says "make substantial modifications", and my
4 question to you is a very simple one. Are these changes not
5 substantial, or are they not modifications? Which is it?

6 MR. MARLIN: The specific change of relining the ponds
7 to meet federal requirements is a change which does not affect
8 the design capacity or the treatment at the facility.

9 SENATOR KEENE: Did you know that during --

10 MR. MARLIN: It is purely to enhance the environmental
11 safety of the facility, for that purpose alone.

12 We do not take the position that the Legislature ever
13 intended to stop any kind of action which would make the
14 environment safer.

15 SENATOR KEENE: If it makes the environment safer, why
16 is it that there was a spill of a million gallons, a discharge of
17 a million gallons during the recent rains containing heavy
18 metals, including concentrations of copper that are not allowed
19 by the Regional Water Quality Control Board, possibly other
20 metals as well, possibly organics. And because nobody, including
21 your agency, has gone down there to monitor it, perhaps the
22 Department of Fish and Game did today at my request yesterday,
23 you don't even know what's coming out of there.

24 But they're moving contaminated earth around in large
25 quantities, you say it's not a substantial modification because
26 it improves things. If it improves things, how did what happened
27 a few days ago happen?
28

1 And even if it improves things, the statute doesn't say
2 that. says "substantial modifications". It says nothing
3 about improvement.

4 And you can't verify that there was an improvement
5 because you don't know.

6 MR. MARLIN: The other fact is that I'm not an engineer,
7 and I certainly couldn't testify as to the sufficiency of what's
8 being done there.

9 I also couldn't testify as to these occurrences that
10 you've just mentioned. These are certainly news to me.

11 And the other thing is that I do not understand their
12 relation to the relining of the pond. Whether this would have
13 happened regardless of that relining or not is something that
14 I've yet to figure and would have to go back to my sources to
15 figure out.

16 SENATOR KEENE: Let me get to another point.

17 Did you allow them to make those changes, those
18 modifications?

19 MR. MARLIN: Personally I did not.

20 This was a decision made by the Department through the
21 Emoryville Regional Office.

22 SENATOR KEENE: Did you have the power to disallow those
23 modifications?

24 MR. MARLIN: Certainly.

25 SENATOR KEENE: There was a discretionary act, and
26 therefore, I presume that that act comes under the CEQA law in
27 that an Environmental Impact Report should have been prepared.
28

1 Since it wasn't, my question to you is: What happened?
2 Did you again default on your responsibilities?

3 MR. MARLIN: Not at all. It is our understanding that
4 the County was the lead agency regarding the relining of the
5 ponds, and that the County did in fact issue a negative
6 declaration regarding this project.

7 SENATOR KEENE: Your understanding is that the County
8 issued a negative declaration?

9 MR. MARLIN: That's correct.

10 SENATOR KEENE: What is the date of that declaration?

11 MR. MARLIN: I would have to get that information to you
12 later.

13 SENATOR KEENE: I know of no negative declaration by the
14 County. I believe it's a serious question as to whether the
15 County is the lead agency. I believe they're not. I think you
16 would like them to be, but I believe in fact they're not the lead
17 agency; that you are, and that you have failed to follow the law
18 again here.

19 You have not only exceeded the authority to grant
20 interim status modifications, which doesn't exist under our
21 codes. It may exist under your regulations, but it certainly
22 doesn't exist under our codes, and if in fact through a
23 discretionary act you allowed them to make these modifications
24 without requiring an Environmental Impact Report, I think here
25 again you're in violation of the law and certainly not leaning on
26 the side of public health and safety, which requires that more
27 information, not less, be gathered.
28

1 Another point, 501 hearings. Are you familiar with
2 501(c), without which a county cannot do anything to restrict the
3 use of a toxic waste dump?

4 MR. MARLIN: I believe you're referring to Health and
5 Safety Code Section 25149.3; is that correct?

6 SENATOR KEENE: That's correct, more commonly referred
7 to as 501(c) hearings.

8 The county may not act unless the Department of Health
9 holds a hearing and unless the Department finds that there is a
10 substantial risk to public health; is that correct?

11 MR. MARLIN: It is my understanding that that section
12 provides that no new land use restriction can be placed on a
13 facility absent a notice and a public hearing, and a
14 determination by Director that, and I quote:

15 "that the uses of the property con-
16 stituted significant existing or
17 potential hazard to present or future
18 public health or safety."

19 SD: Are you familiar with the fact that Senator Torres,
20 in a hearing, requested that a 501 hearing be held with reference
21 to the I.T. dump site at Benicia, and that Mr. Wilcoxon said
22 flatly: Nothing doing.

23 MR. MARLIN: I was not present at that -- at that
24 hearing and have no information to comment on that.

25 SENATOR KEENE: Well, Mr. Wilcoxon, your then Chief of
26 Toxics, refused to hold a 501 hearing on grounds that there was
27 no evidence that there was any imminent threat to public health
28

1 and safety despite the fact that EPA cited the area for leakage
2 in the ponds, for the mixture of incompatible wastes, and of
3 course, a million gallons and another 10-20 million gallons are
4 going to be dumped in the area near Suisun Marsh, and yet there
5 is no threat to public health and safety.

6 MR. MARLIN: Well --

7 SENATOR KEENE: No wonder none of the dump site
8 operators are here to challenge your confirmation, Dr. Kizer.
9 They're very pleased with the way you've been conducting yourself
10 with your use of the regulatory mechanisms to not interfere with
11 anything that they would like to do.

12 DR. KIZER: Senator, if the County requests a 501
13 hearing we will hold one.

14 SENATOR KEENE: I'm sorry, I didn't understand?

15 DR. KIZER: If the County requests what you referenced
16 as a 501(c) hearing, we will hold one.

17 SENATOR KEENE: The City has requested one, and the
18 answer is no.

19 DR. KIZER: Has the City written and requested that, or
20 was this merely Mr. Torres' request?

21 SENATOR KEENE: Well, it was Mr. Torres' request at the
22 time. I believe that City has. If the City has not we'll find
23 out shortly because we have the mayor of the City here to testify
24 on the City's relationship with the Department of Health Services
25 and their ability to rely on the Department of Health Services to
26 protect the health and safety of the residents of Benicia, of
27 which I'm one.
28

1 Let's get into another category very briefly. I know
2 we're running out of time.

3 The loss of RCRA authority. EPA has snatched your RCRA
4 authority.

5 Why?

6 CHAIRMAN ROBERTI: Will you explain RCRA?

7 SENATOR KEENE: Yes, perhaps Counsel can explain RCRA.

8 MR. MARLIN: Essentially RCRA is Resource Conservation
9 Recovery Act, which is the federal equivalent to the State
10 Hazardous Waste Control Law.

11 Essentially the way that the Act is set up is that once
12 EPA gives approval to a State hazardous waste program, that
13 program operates in lieu of the federal program.

14 We have gone through several phases of this
15 authorization process and are now at the final phase.

16 It is my understanding that we have not -- EPA has not
17 snatched RCRA from us, but it has expired by statutory deadline.

18 DR. KIZER: California is one of a number of states that
19 was not given final authorization on -- or after January 31st.

20 They have entered into a reversion agreement with us
21 which basically puts us in the same position that we were in a
22 few weeks ago in that we are carrying out the RCRA program in
23 California. And it's my understanding that they are reviewing
24 the various materials that were submitted to them, and that they
25 will be issuing a tentative statement and what we would hope, the
26 final authorization, in the next few months.

27
28

1 MR. MARLIN: I would also like to mention that we have
2 addressed all the concerns of EPA with the exception of an MOU, a
3 Memorandum of Understanding, with the State Water Control Board,
4 which has been completed and is now under review, I understand,
5 by the Department of Finance.

6 DR. KIZER: That has been signed by both the Water Board
7 and the Department.

8 SENATOR KEENE: My impression is that in the ordinary
9 course of events, had EPA found you to be carrying out the
10 responsibilities under RCRA that were conceived at the time that
11 state authority was written in as allowable under federal law,
12 state administrative authority, that your RCRA authority would
13 have been extended.

14 Is that incorrect?

15 DR. KIZER: I'm not sure I understand your question
16 because it does sound like it's incorrect.

17 SENATOR KEENE: That they would not have extended your
18 RCRA authority had you been in compliance with federal statute?

19 DR. KIZER: Sorry, I still don't understand your
20 question.

21 SENATOR KEENE: It's my understanding from the EPA that
22 they would have extended your authority to administer RCRA had
23 you been in compliance with federal standards, and that in fact
24 you were out of compliance with federal standards, including the
25 failure to designate a lead agency and other deficiencies.

26 DR. KIZER: Well, there's a number of points there. One
27 is that, as I just said, we have entered into an agreement that
28

1 they have signed and we have signed, which does in essence what
2 you say, so it's a little hard for me to understand what you're
3 saying because it's not consistent with what is indeed record.

4 As I understand it also, after January 31st, they did
5 not have the authority, the legal authority, to extend that
6 further; that after January 31, that was as far as they could go.

7 SENATOR KEENE: Well, EPA indicates that the State has
8 failed to submit a complete application that contains all
9 necessary information for processing of the application for
10 continued authority. The State has failed to properly delineate
11 the responsibility for each of the agencies administering the
12 program. The State has failed to properly designate a lead
13 agency, and the State has failed to adequately describe its
14 compliance tracking and enforcement program, and that in the area
15 of enforcement, your Department is woefully inadequate.

16 MR. MARLIN: May I ask what document you were referring
17 to there and what the date of that document is?

18 SENATOR KEENE: Yes, I'll get that information for you.

19 I'd like to at this time, with the Committee's and the
20 Chair's permission, call the Mayor of Benicia.

21 CHAIRMAN ROBERTI: Would the Mayor of Benicia come
22 forward.

23 SENATOR KEENE: Mayor O'Rourke.

24 CHAIRMAN ROBERTI: Please identify yourself.

25 MAYOR O'ROURKE: My name is Marilyn O'Rourke. I'm the
26 Mayor of Benicia.

27

28

1 Benicia is a city that has 22,000 people that has a
2 Class I toxic dump, the I.T. site, north of our city, right
3 outside of our city's boundaries.

4 CHAIRMAN ROBERTI: Do you wish to make a statement on
5 Dr. Kizer's confirmation, or would you just like to respond to
6 questions?

7 MAYOR O'ROURKE: I would just respond to questions, I
8 believe.

9 CHAIRMAN ROBERTI: Senator Keene.

10 SENATOR KEENE: You had some concerns about the I.T.
11 toxic dump site, which is a Class I site, about which you
12 contacted the Department of Health?

13 MAYOR O'ROURKE: Yes, I had contacted -- first of all
14 had gone to EPA right after I had found -- when I had visited the
15 site I had found this huge pit which you referred to as a trench,
16 which in fact at this point, you might be interested to know, is
17 40 feet deep, 500 feet by 600 feet, and is at this point under
18 about 10 feet of water.

19 So, I had gone to the County and then had gone to EPA to
20 talk to the Regional Administrator, Judith Ayres. After that
21 conversation with her, she said: Have you talked to Ken Kizer?
22 And I said no, that I had not; that I had been dealing with the
23 Emoryville office, with a man by the name of Dwight Hoenig.

24 So at that point I put a call in to Ken Kizer's office,
25 and that was -- I got out my notes, so if you'll bear with me.

26 SENATOR KEENE: Approximately when was the phone call to
27 --
28

1 MAYOR O'ROURKE: The original phone call to Dr. Kizer
2 was on September 10th, and then I didn't receive a response. I
3 called again on September 20th, and he still didn't call me back.

4 SENATOR KEENE: Did you get a response from anybody else
5 at the Department of Health?

6 MAYOR O'ROURKE: Yes, on -- a month later, on October
7 23rd, I got a call from Dwight Hoenig, who's the Regional
8 Administrator, who told me that he was in fact on his way down to
9 a meeting with Dr. Kizer and that -- and wanted to know what I
10 wanted and why I was calling Dr. Kizer.

11 SENATOR KEENE: Mr. Chairman, Senator Mello suggested
12 that the witness be placed under oath.

13 SENATOR MELLO: I was just being facetious.

14 I'm only a nonattorney, and I'm having a hard time
15 following the proceeding. I thought a 501 had to do with drunk
16 driving.

17 (Laughter.)

18 SENATOR KEENE: In a sense it does.

19 For a month you received no return phone call from Dr.
20 Kizer, then you got a phone call from a Mr. Hoenig. And Mr.
21 Hoenig indicated to you that he was going to meet with Dr. Kizer
22 and what happened next?

23 MAYOR O'ROURKE: Well, he wanted me to express his
24 concerns to him, and I must admit at that point I was a bit
25 miffed because I had been in to see Judith Ayres and everyone
26 else, and couldn't seem to get a phone call back from Dr. Kizer.
27 And I told Mr. Hoenig that.
28

1 And he said: Well, just tell me your concerns, and I'll
2 express them to Dr. Kizer and call you back. And then he
3 apparently had an appointment with Dr. Kizer either that day or
4 the next day, and he called me back on Friday, the 25th, with the
5 results of that conversation, I guess.

6 SENATOR KEENE: And your conversation with Mr. Hoenig,
7 do you have any recollection of that conversation?

8 MAYOR O'ROURKE: Well, I'm one of these people who keeps
9 careful notes in the daytime around important conversations, so I
10 have my notes, and because of the nature of the conversation I
11 would like to just read from the notes, if I could.

12 SENATOR KEENE: Would you recite for the purposes of
13 this Committee what the nature of that conversation with Mr.
14 Hoenig was?

15 CHAIRMAN ROBERTI: This is a conversation with whom?

16 MAYOR O'ROURKE: With Mr. Hoenig, who is the Regional
17 Administrator from Emoryville, Department of Health Services.

18 He phoned me that morning and said that he had in fact
19 met with Dr. Kizer and that he was trying to find a resolve to
20 the problem that faced Benicia.

21 At that point, just very briefly, we -- the City of
22 Benicia was trying to find a way to get an Environmental Impact
23 Report, which we still are trying to do, but with regard to this
24 pit that has been dug there. So that was the substance, and
25 there were other long standing problems.

26 During the course of the conversation, Mr. Hoenig said
27 that he wanted -- he wanted to know how I felt as the Mayor of
28

1 Benicia about I.T. providing a bond that would fund a consultant
2 that would make unannounced visits to the site, and that the City
3 and the County and possibly the Department of Health Services
4 would pick three people. And I.T. would pick the person whom
5 that bond would pay for. And that in his view, it was going to
6 give us the independent evaluation that we had been seeking.

7 He said that he thought he would have some problems,
8 perhaps, getting that approved by the Department of Health
9 Services because that essentially was what they were supposed to
10 be doing, but he thought he could swing it. He thought he could
11 get I.T. to put up the money for the bond.

12 Then he went on to talk about the fact of HazMat
13 vehicles, and HazMat vehicles are those vehicles --

14 SENATOR KEENE: Could you bring the microphone a little
15 closer?

16 MAYOR O'ROURKE: I'm sorry. Is that better?

17 CHAIRMAN ROBERTI: Yes.

18 MAYOR O'ROURKE: HazMat vehicles are hazardous materials
19 vehicles that are like first response vehicles to an incident in
20 which it's sort of like a huge truck that has equipment and
21 materials and uniforms, and it's for people to respond to.

22 He said that the State budget had bought eight HazMat
23 vehicles, and that maybe -- he said: Maybe I can get you one, or
24 maybe I.T. will give you what you need.

25 And then he went on to discuss that, and he said:
26 Clearly, I.T. is going to ask me how would this alter your stand;
27 this site is not going to go away.
28

1 Then he went on, because I had had some concerns with
2 regard to Casmalia as well, having had some correspondence and
3 some conversations with them. He said: It looks like portions
4 of Casmalia are going to be closed real soon and the only thing
5 that will be left will be Kellerman and I.T. And then he was
6 talking about the fact that I.T. would be potentially taking the
7 liquids that Casmalia could not take. And that there was a new
8 site, I.T. site, that would soon be permitted in Wilmington.

9 Then he went on to discuss some other concerns that I
10 had. And then he said: In barroom terms, I guess I'm talking
11 about a bribe. I can arrange training for you from I.T. I.T.
12 are good trainers; I took their classes.

13 CHAIRMAN ROBERTI: Read that again?

14 MAYOR O'ROURKE: He to me: In barroom terms, Marilyn, I
15 guess I'm talking about a bribe. I can arrange I.T. training for
16 you, too. I.T. are good trainers; I took their classes.

17 Then I honestly didn't know what to say, and so I
18 started talking about the road, because I've --

19 CHAIRMAN ROBERTI: About the what?

20 MAYOR O'ROURKE: About the road. I've been trying to
21 get a new road into I.T. so that they're not using the common
22 road that goes into the industrial park.

23 CHAIRMAN ROBERTI: So, his point was that if I.T.
24 provided you with these HazMat vehicles, and you withdrew your
25 opposition, that would be the barroom term bribe? Is that how
26 you understood it?

27

28

1 MAYOR O'ROURKE: Well, I think it was that, and the
2 addition that they would provide a bond for an independent agent.

3 CHAIRMAN ROBERTI: And if they provided a bond for an
4 independent agent, if I.T. provided a bond --

5 MAYOR O'ROURKE: Exactly.

6 CHAIRMAN ROBERTI: -- for an independent agent, and you
7 withdrew your opposition.

8 Your opposition to what? Let's specify that.

9 MAYOR O'ROURKE: I guess I would have been my opposition
10 to I.T.'s being able to expand that site without an Environmental
11 Review.

12 CHAIRMAN ROBERTI: Was there anything in the
13 conversation, other than what you've given us, that would
14 indicate that Mr. Hoenig was acting as an advocate for I.T.?

15 MAYOR O'ROURKE: The only other thing would be when I
16 discussed the road, he said: Well, I.T. says the road's going to
17 cost \$8 million, and I said: No, that our figures estimate the
18 road will cost \$50,000 -- \$500,000 and maybe 250,000.. And he
19 said: Well, there are 250 trucks a day that are going to be
20 expected once that site -- this expansion is completed, and that
21 I needed to realize that there were winners in this game and
22 there were losers, and that the winners needed to compensate the
23 losers.

24 CHAIRMAN ROBERTI: I'll ask Dr. Kizer: Is Mr. Hoenig an
25 appointee of yours or the administration's, or is he a civil
26 servant? What is his position?

27 DR. KIZER: He's a civil servant.
28

1 CHAIRMAN ROBERTI: He is a civil servant.

2 Did you ever speak to Mr. Hoenig regarding the City of
3 Benicia's withdrawal of opposition --

4 DR. KIZER: No.

5 CHAIRMAN ROBERTI: -- for the I.T. site? You've never
6 discussed that with Mr. Hoenig?

7 DR. KIZER: No, I've had some brief discussions with
8 them down there, and I have -- I made a quick tour of that
9 facility when I was down there one day with them.

10 CHAIRMAN ROBERTI: About when was that?

11 DR. KIZER: It was last fall. I could find the exact
12 dates, but I don't recall it exactly when.

13 As has been my practice, I try to get out to as many of
14 the sites as possible to see them when I'm in the area.

15 But none of the things that have been referenced here
16 were things that were discussed with me.

17 CHAIRMAN ROBERTI: Did Mr. Hoenig ever refer to the fact
18 that he discussed any of this with Dr. Kizer?

19 MAYOR O'ROURKE: The only thing he said, Senator, was
20 when he called me on Wednesday the 23rd, he told me he was going
21 to meet with Dr. Kizer, and then he called me on the 25th and
22 said he had met with him and that they were trying to find a
23 novel solution to the problem.

24 CHAIRMAN ROBERTI: The 25th of what?

25 MAYOR O'ROURKE: The 25th of October, 1985.

26 CHAIRMAN ROBERTI: When was this conversation where he
27 used the words barroom bribe, or whatever?

1 MAYOR O'ROURKE: Barroom terms, October 25th.

2 CHAIRMAN ROBERTI: That was the 25th.

3 Any further questions?

4 SENATOR KEENE: Did you beep a lot to let him know you
5 were taking notes while he was talking?

6 MAYOR O'ROURKE: No, I gave -- I work as a recruiter,
7 and there's a way for me to tape record someone's resume if I
8 want to where I can say: Just a minute, I'm going to record
9 this. And I can plug in a tape recorder into their office.

10 And I must admit, I gave a fleeting thought to doing
11 that, and then I thought no, I'd better not do that; I'll just
12 take copious notes, but no.

13 SENATOR KEENE: Thank you.

14 I have a copy of the document I told Counsel I'd provide
15 him with. It is a letter from EPA to Dr. Kizer, dated January
16 21st, 1986, from Judith Ayres, the Regional Administrator, and it
17 contains as an attachment a Capability Assessment Action Plan for
18 Authorization, called a CAAP, C-A-A-P. And it lists among the
19 deficiencies which have to be corrected by DHS: conduct fiscal
20 year '86 mid-year number of major facility compliance evaluation
21 inspections; comprehensive monitoring inspections; joint
22 inspections, and it says next to it:

23 "Commitments are not being met."

24 It says:

25 "The rate of noncompliance with
26 ground water monitoring requirements
27 is high."
28

1 It says:

2 "It's the responsibility of DHS to
3 demonstrate DHS enforcement actions
4 based on Regional Water Quality Con-
5 trol Board inspection reports."

6 And it says under that:

7 "None to date."

8 It says:

9 "DHS must demonstrate effective
10 oversight and coordination by DHS
11 Office of Enforcement for all as-
12 pects of the Division's RCRA
13 hazardous waste enforcement program
14 has not been demonstrated to date."

15 It says:

16 "DHS must submit copies of the
17 Office of Enforcement reviews and
18 evaluations of RCRA actions, re-
19 ferrals initiated by the regions,
20 none to date."

21 It says:

22 "The timely and appropriate en-
23 forcement actions are not always
24 taken and it is the responsibility
25 of DHS to demonstrate that appro-
26 priate enforcement action is taken
27 within 75 days from the date of
28

1 inspection detection for Class I
2 violations."

3 And it says:

4 "That applies to both DHS and
5 Regional Water Quality Control
6 Board identified violations."

7 And under the "Comments", it says:

8 "Initial review transmitted to
9 DHS 12/20. Results not encouraging."

10 That's the document.

11 MR. MARLIN: Thank you, Senator.

12 The reason I asked is that I wasn't sure, but I believe
13 it was that CAAP or Capabilities Assessment Plan that you were
14 referring to.

15 What I would like to mention is that we have already
16 offered to your staff the voluminous response that we gave on
17 December of '85 to that pointing out the inaccuracies in that
18 plan.

19 We would certainly be willing to address each of those
20 points through the submission of documents that we've already
21 produced for EPA, and we stand ready to answer those questions.

22 SENATOR KEENE: I realize that, but certainly the
23 impression of EPA is that the Department of Health Services is
24 not capable of administering RCRA or they would not have set
25 these things forth. You may be able to convince them that they
26 are wrong, or that you're going to do better next time, but in
27 fact you were deficient.
28

1 Just as you don't regard this huge ditch that has been
2 dug and is now filled with water for discharge into the Suisun
3 Marsh so that they can get rid of the excess water, as
4 contaminated as it is, just as you don't consider those
5 substantial modifications, apparently these deficiencies cited by
6 EPA, including enforcement deficiencies, were called by the
7 Governor as, what, mere technical transactions that had to be
8 corrected, something like that?

9 MR. MARLIN: Not at all. They were inaccuracies in
10 EPA's bookkeeping and in some instances information regarding
11 enforcement had been submitted but had not been reflected on
12 their computer system by the time that the report was prepared.
13 It was simply a misinformation in many instances.

14 The characterization is certainly EPA's, but the facts
15 do not bear it out in our estimation.

16 DR. KIZER: Further, the fact that they have asked us to
17 continue carrying out that program does not seem consistent
18 either.

19 SENATOR KEENE: They have asked you to?

20 DR. KIZER: We have recently signed an agreement with
21 them.

22 SENATOR KEENE: You said they asked you to. What was
23 the communication in which they asked you to carry it out?

24 DR. KIZER: We could go back and check our files on
25 that, but they have -- we have entered into an agreement with
26 them extending that we will continue to carry out this program.

27

28

1 SENATOR KEENE: You know, we asked you to. You're under
2 a state mandate pursuant to statute. You are required to
3 administer RCRA and to fulfill the capabilities.

4 You have not done so, according to EPA. Now, it may be
5 in the future that you will comply. I mean, that's a nice
6 promise and you may fulfill that promise, but at present you're
7 out of compliance, and EPA has taken away your RCRA authority.

8 Is that not a true state of affairs?

9 DR. KIZER: That's not true, no.

10 SENATOR KEENE: Oh, it's not true?

11 DR. KIZER: Because they have not taken it away.

12 SENATOR KEENE: They certainly didn't extend it.

13 DR. KIZER: Because the law didn't allow them to.

14 SENATOR KEENE: The law didn't allow them? Which law
15 didn't allow them to?

16 DR. KIZER: The federal law.

17 SENATOR KEENE: They didn't do it because of
18 deficiencies?

19 DR. KIZER: After January 31, pursuant to the
20 conversations I had with Ms. Ayres, they were not allowed to
21 extend it beyond that date, federal law.

22 SENATOR KEENE: How is it that they're allowed -- how is
23 it that they're returning it to you now, and they're able to
24 return it to you now if they don't have the authority to do it?

25 DR. KIZER: Well, I mean, they have said under this
26 agreement that the reversion will be temporary, and we've signed
27 that agreement.
28

1 SENATOR KEENE: The reason they didn't have authority to
2 do it was that you were deficient.

3 DR. KIZER: I guess we're either not communicating, or
4 we --

5 SENATOR KEENE: Why are they able to do it now and they
6 weren't able to do it then?

7 You say they're going to return RCRA authority to you as
8 soon as you satisfy what they want, so presumably they have
9 authority to do it.

10 If they have authority to do it now, why didn't they
11 have authority to do it then? Did Congress intervene in the
12 meantime?

13 DR. KIZER: I think we may be talking about apples and
14 oranges here because we have signed an agreement pending their
15 final decision. They do not have the authority to extend the
16 formal time period to grant this, and we have entered into an
17 agreement with them.

18 SENATOR KEENE: Well, then we are talking about apples
19 and oranges, but I think you're the one that injected the oranges
20 because couldn't they have given you final authority at the time,
21 at the end of the period?

22 DR. KIZER: They said they had not had time to evaluate
23 the material that had been submitted to them.

24 SENATOR KEENE: No, they said you didn't submit all the
25 material, reading that letter.

26 DR. KIZER: Well that's what the letter says, and as
27 Counsel has pointed out, there were inaccuracies in that letter.

1 SENATOR KEENE: And they said your enforcement was lax.

2 DR. KIZER: Again?

3 SENATOR KEENE: Another inaccuracy.

4 Thank you.

5 CHAIRMAN ROBERTI: What's the date of the letter,
6 Senator?

7 SENATOR KEENE: The letter is dated January 21st, 1986,
8 from Judith Ayres of the Environmental Protection Agency, setting
9 forth --

10 CHAIRMAN ROBERTI: In Washington?

11 SENATOR KEENE: She is the Regional Administrator out of
12 San Francisco, I believe.

13 DR. KIZER: That is correct.

14 SENATOR KEENE: Region 9.

15 CHAIRMAN ROBERTI: Maybe Counsel could answer the
16 question, or you, Dr. Kizer: When the authority to administer
17 RCRA lapses, who administers it in the State?

18 DR. KIZER: Well, technically it reverts to the federal
19 government, to EPA; however, EPA has asked us to continue that
20 because they're not -- they could not do it.

21 CHAIRMAN ROBERTI: What is the status right now?

22 DR. KIZER: We have signed, entered into an agreement
23 with them to continue to carry that out.

24 CHAIRMAN ROBERTI: Was there a period of lapse at all in
25 which the State was not able to administer RCRA?

26 DR. KIZER: Well, there was a period where we were not,
27 as I understand it and Counsel should correct me if I'm wrong
28

1 here, but technically the program had reverted to the federal
2 government for a period of a few weeks, two or three weeks, as
3 the agreement was being worked out insofar as the specific
4 wording. But that we continued to carry out the program during
5 this time.

6 MR. MARLIN: The other thing we should point out is that
7 California law is more stringent in many areas of hazardous waste
8 enforcement. The question of being preempted by federal law in
9 this area is not all that clear. There are certain elements in
10 the program, since they are not covered in the federal program,
11 which may not be preempted in any case.

12 CHAIRMAN ROBERTI: But there are aspects of the RCRA law
13 that the State was deauthorized on; am I correct?

14 MR. MARLIN: That's correct, under RCRA for a short
15 period of time.

16 SENATOR KEENE: For clarification, Mr. Chairman, the
17 current agreement is only a temporary reversion agreement, and as
18 I understand it, the State has lost authority to make final
19 decisions over permits like the I.T. Benicia permit.

20 And secondly, that they can no longer prosecute federal
21 agencies, where a great deal of the dumping takes place.

22 CHAIRMAN ROBERTI: So, I take it, Senator Keene, you're
23 saying that the restored authority is limited?

24 SENATOR KEENE: The restored authority is both temporary
25 and limited.

26 MR. MARLIN: I can comment --

27 CHAIRMAN ROBERTI: Yes, Counsel.
28

1 MR. MARLIN: I can comment specifically regarding
2 certain actions now being taken mostly against Air Force bases:
3 Norden Air Force Base, Edwards Air Force Base, and several
4 others.

5 EPA has requested that we issue orders and take action
6 against their interim status facilities, and we are now in the
7 process of negotiating with EPA's review with these facilities to
8 assure compliance.

9 So, while I'm not quite sure where the Senator's
10 information comes from, the fact is that at the present time we
11 are actively involved in the enforcement against federal
12 facilities of RCRA violations.

13 SENATOR KEENE: And you can continue to do that without
14 RCRA authority?

15 MR. MARLIN: We continued to do that with EPA's review
16 and concurrence in our matters -- in our activities.

17 SENATOR KEENE: Well, I think then that what happens is
18 the State has become kind of a gopher for EPA rather than an
19 independent enforcement authority as authorized by EPA.

20 And incidentally, I bring to the Committee's attention
21 that the position of Dr. Kizer with reference to the EPA's
22 inability to extend the RCRA authority to the State of California
23 is incorrect, and I'm citing now EPA regulations 271.137 on the
24 reversion of State programs. It says:

25 "The Regional Administrator may extend
26 this deadline for good cause."
27
28

1 And that's the specific deadline that we were talking about.

2 So, your position is incorrect on that, Dr. Kizer.

3 DR. KIZER: That runs counter to what Ms. Ayres told me,
4 but I'm not in a position at this point to debate the point.

5 SENATOR KEENE: I'll make this available to Counsel and
6 yourself as well.

7 CHAIRMAN ROBERTI: Any further questions of Mayor
8 O'Rourke?

9 Hearing none, thank you, Mayor.

10 Any further questions?

11 We've been joined by Senator Hart. Senator, would you
12 like to ask some questions?

13 SENATOR HART: Thank you, Mr. Chairman.

14 I just wanted to follow up, if I could, on a question
15 that Senator Keene, I believe, asked earlier about the 501
16 hearing process.

17 I represent a district that has a Class I dump site in
18 my district and have been anxious to get a 501 hearing for some
19 time.

20 My understanding of the question to Dr. Kizer was, what
21 can we do to get a 501 hearing, and the response by Dr. Kizer
22 was: Well, if the County wants one, we'll have one.

23 That's precisely what Santa Barbara County has been
24 attempting to do for months. And we have been stonewalled by Dr.
25 Kizer and his Department on holding this process.

26 To me, it's a very important, fundamental issue, that if
27 you have a community that has one of these dump sites, that has
28

1 legitimate public health concerns, you have the Director of the
2 Department of Health within the County of Santa Barbara asking
3 for the dump to be closed down or at least to have a 501 hearing,
4 to have that be acknowledged.

5 There have been legitimate questions raised about the
6 safety of this facility, concerns of school children, to parents,
7 to teachers, and we can't get a 501 hearing. So, when I heard
8 that that question had been asked by Senator Keene, I wanted to
9 try and understand what are the criteria by which you, Dr. Kizer,
10 will authorize 501 hearings? Because to date, you have been
11 unwilling, you have resisted all efforts by State Legislators, by
12 the Director of Health of the County of Santa Barbara, the Board
13 of Supervisors, to hold a 501 hearing.

14 DR. KIZER: Mr. Chairman, shall I respond?

15 CHAIRMAN ROBERTI: Yes, please, Dr. Kizer.

16 DR. KIZER: I think the Casmalia situation is different.
17 As you're well aware, we have placed some restrictions on the
18 operation of the Casmalia facility.

19 There are differences there also in that there is an
20 ongoing evaluation of these health effects. There have been
21 various hearings or readings, and there may be some quibble as to
22 exactly what words they should be called, but there has been a
23 lot of dialogue on this matter.

24 I think that the situation is different there than it
25 may be perhaps in Benicia.

26 SENATOR HART: Well, Dr. Kizer, to say that we're
27 quibbling, or that this -- that the dialogue is taking place, the
28

1 Senate Toxics Committee went to Casmalia. We had a hearing, with
2 your second or third person in command. We asked for the 501
3 hearing, and the bottom line was they said: We don't want to do
4 it because we're concerned about liability issues.

5 We'll have another hearing, they said, but we don't want
6 to call it a 501 hearing.

7 They held the hearing, and it was -- I wasn't present at
8 the hearing, but all the people that attended were extremely
9 disturbed and upset by the nature of that hearing. Basically a
10 hearing officer sat there and said: Well, what do you want to
11 say? They gave their testimony; no opportunity for response; no
12 thoughtful questions from the hearing officer.

13 It seems to me if you've got one of these dumps in your
14 district, you're entitled to have the State of California
15 representing the public health of the citizens of California and
16 asking, you know, thoughtful questions.

17 But they were basically there to go through the motions,
18 and it was the most infuriating process that I've ever seen my
19 constituents have to go through.

20 The law, as I understand it, when this law was passed,
21 501 says: We're going to take away the County's ability to close
22 down dumps; we're going to give that to the State of California,
23 but we're going to have the Director of the Department of Health,
24 not the Department of Toxic Pollutants, but the person who's
25 supposed to be looking out for the health of the citizens of
26 California, who can intervene and hold a credible hearing in this
27 process.
28

1 And to date, you've been unwilling to do that. And I
2 don't understand why now you tell Senator Keene: Oh, you want a
3 501 hearing? No problem, we've have a 501 hearing.

4 We've been trying to do that in Santa Barbara for six
5 months.

6 SENATOR KEENE: I'm not sure they're talking about the
7 same 501 hearing.

8 Are you talking about Section 25149 or 25149.3?

9 MR. MARLIN: Right now we're not talking. I'm not sure
10 which section the Senator's referring to.

11 SENATOR KEENE: Section 25149 is the hearing that
12 counts.

13 MR. MARLIN: They both deal with land use restrictions
14 to a significant extent. They are slightly different as far as
15 the standards that must be used, must be met, before a county can
16 issue new land use restrictions.

17 The other important thing to point out here is that we
18 are talking about new land use restrictions. Existing land use
19 restrictions are still in place and enforceable under these
20 sections.

21 I'm not quite sure what the specifics are in -- I
22 believe the Casmalia dump is the one you're referring to, but the
23 applicability of either section depends both on the standard of
24 proof and exactly what relief you're requesting.

25 SENATOR HART: I don't have a copy of the statute before
26 me, but my general understanding is that there's a mechanism in
27 law called in part 501, that if a local community feels like
28

1 there is a health hazard associated with a Class I dump, that
2 there is a process through State law by which the Director of the
3 Department of Health, if he feels that these are credible
4 allegations and concerns that have been raised by the public, and
5 certainly to have the County Health Officer and other responsible
6 officials in Santa Barbara County say that they are concerned,
7 and they want such a hearing, the Director has the authority to
8 call that hearing.

9 And to date, this Director has been unwilling to even
10 have this formal mechanism by which we can have a serious
11 discussion instead of just sort of anecdotal charges that sort of
12 go back and forth between individuals --

13 DR. KIZER: I think that's a good point, Senator.

14 SENATOR KEENE: And denied Senator Torres in the rudest
15 possible way. Not you personally, but your Chief of Toxics, Mr.
16 Wilcoxon.

17 DR. KIZER: Former Chief.

18 SENATOR KEENE: Former Chief.

19 CHAIRMAN ROBERTI: Dr. Kizer.

20 DR. KIZER: Yes, I would like to respond to that in two
21 ways.

22 One is that I am concerned, and I think that you have
23 acknowledged that, at least in personal conversations with me,
24 and that you are aware of the teams that have gone down there and
25 done some special investigations; the ongoing health effects
26 assessment that is going on down there. The university people
27 have been involved in trying to determine what the public health
28 impact of the Casmalia site is as well.

1 So there indeed is a lot of activity going on with
2 regard to what the health effects are of the Casmalia facility.

3 The second point I would make is that if you indeed
4 still feel that this will be useful and construction, and if it's
5 requested, I have no problem in holding one.

6 SENATOR HART: Dr. Kizer, we've been requesting it for
7 six months. This is not a new request. This has been ongoing,
8 and to say now you're going to acknowledge it because we're in
9 this hearing, but two months ago, when we asked and not only
10 myself but other Legislatures and the County health officials.

11 DR. KIZER: And I think what you have been informed
12 before is that we felt that the investigations that are going on
13 down there, which are certainly far more intensive and far more
14 likely to deduce whether there is indeed any adverse health
15 effects going on, is going to be more revealing than holding a
16 hearing.

17 SENATOR HART: Mr. Chairman, I don't want to belabor
18 this, I'd just like to ask the original question again.

19 What are the criteria by which you, as the Director of
20 the Department of Health, hold 501 hearings?

21 DR. KIZER: It's my understanding that they are
22 discretionary, and I think that what we would like to see is that
23 if that is the best way, then we will do it. If there are other
24 ways, then we may do that or we may do both.

25 SENATOR HART: So, there are no procedures that you have
26 in place. There are no standards, health standards, if certain
27 standards are raised or certain credible health officials raise
28

1 concerns, that that's what will trigger the hearing? It's
2 something that you see as entirely subjective and discretionary
3 on your part, and there are no standards by which you determine
4 whether or not such a hearing will be held?

5 DR. KIZER: I don't know that there are any formal
6 written standards as to when those will be conducted.

7 Again, Counsel should correct me if I'm wrong.

8 MR. MARLIN: No, that's correct. The statute
9 essentially does not state any criteria, and that is our lack as
10 well as yours.

11 SENATOR KEENE: Mr. Chairman, on that point.

12 CHAIRMAN ROBERTI: Senator Keene.

13 SENATOR KEENE: During the hearing outside the Benicia
14 dump site, in the City of Benicia, there was this little
15 chicken-egg situation that was created by the Department Health
16 wherein the Chief of Toxics, Wilcoxon, said on behalf of the
17 Department of Health Services, said: You show us that there is
18 an imminent danger to public health and safety, and we'll hold
19 the hearing to determine whether there's an imminent danger to
20 public health and safety.

21 That's a circle that no one can enter. That's a
22 complete exclusion of the public hearing process, and that's what
23 your Department of Health stands for symbolically in the minds of
24 people.

25 There's another vicious circle --

26 CHAIRMAN ROBERTI: Give me that comment again?
27
28

1 SENATOR KEENE: Mr. Richard Wilcoxon, the Chief of
2 Toxics --

3 DR. KIZER: Former Chief.

4 SENATOR KEENE: Former Chief of Toxics.

5 (Laughter.)

6 SENATOR KEENE: Yes, I would italicize that word too if
7 I were you.

8 The other circle that's been created is that the County
9 of Solano has been told that under the 501 process, they have not
10 authority to do anything to restrict this toxic waste dump to
11 impose any land use decisions because the statute says it can't
12 be done without a 501 hearing.

13 And then you say that they are the lead agency. They
14 have the authority to do these things, but they can't do it
15 without the 501 hearing, and you won't grant them the 501
16 hearing.

17 So again, you've circled the wagons and created a
18 situation wherein the public interest in having these issues
19 exposed in an Environmental Impact Report if not a 501 hearing
20 can't be achieved either. You block the 501 hearing; you block
21 the EIR process; you block the public from knowing anything about
22 it, and we get the thing that occurred in Benicia a few days ago
23 where they dumped a million gallons of toxic water.

24 That's why it's happening. And the people do not feel
25 safe. They don't feel safe here, and I'm sure they don't feel
26 safe in Senator Hart's district.

1 Are you saying you would grant a hearing under Section
2 25149 if the City of Benicia requested one?

3 DR. KIZER: I stand by what I said earlier. I would
4 have to look at the section of the code to know whether that's
5 the appropriate section or not.

6 MR. MARLIN: Point three.

7 SENATOR KEENE: Only a .3 hearing, not a 25149 hearing?

8 MR. MARLIN: That's correct.

9 SENATOR KEENE: Why not the 25149 hearing?

10 MR. MARLIN: Essentially, as I --

11 SENATOR KEENE: Section 25149.0 is the one I'm talking
12 about.

13 MR. MARLIN: Well, once again, this came from
14 discussions with your own staff. And it was our understanding
15 that the major concern of the City of Benicia was land use
16 controls, which we feel are more appropriately addressed in
17 25149.3. Of course the specific statute would depend on the
18 formal request that we received.

19 SENATOR KEENE: So now the third stage of obfuscation
20 is: We will grant you a 501 hearing, but not the 501 hearing
21 that you want.

22 MR. MARLIN: No, I believe what I'm saying is that if
23 you tell us what you want, we'll figure a way to try to
24 accommodate that.

25 SENATOR KEENE: To try to accommodate it.

26 MR. MARLIN: Within the law.
27
28

1 CHAIRMAN ROBERTI: How many 501 hearings have been
2 granted while you've been Director of the Department of Health?

3 DR. KIZER: I don't believe any have, sir.

4 CHAIRMAN ROBERTI: How long have you been the Director?

5 DR. KIZER: About 11 months.

6 CHAIRMAN ROBERTI: About how many requests have been
7 made?

8 DR. KIZER: The only two requests I'm aware of are the
9 two that have been discussed already. I'm not aware of any
10 others ever being requested.

11 CHAIRMAN ROBERTI: The Casmalia request has been for
12 about six months, and the Benicia request for --

13 SENATOR KEENE: I guess a couple months -- six? Five,
14 six months also.

15 DR. KIZER: Again, I think the Casmalia request, there
16 has been quite a lot of activity going on down there that goes
17 far beyond whatever could be accomplished in a 501 hearing to try
18 to determine precisely what are the adverse or potential adverse
19 health effects.

20 CHAIRMAN ROBERTI: How about Benicia?

21 DR. KIZER: I'm unaware of any investigation going on
22 there. I'm also unaware of allegations of adverse health effects
23 either.

24 SENATOR KEENE: The sampling process of the recent
25 dumping of toxic contaminated water is being conducted by the
26 I.T. Corporation, not the Department of Health Services. So, you
27 on the natural would not be aware of any danger to public health
28 and safety or wildlife.

1 DR. KIZER: Is that under the Department's supervision?

2 SENATOR KEENE: They're operating under a permit that
3 you granted, an interim permit that you granted. They were
4 permitted to move around dirt and expose contaminants that were
5 hit by the extraordinary rainfall that we have that have dumped
6 over into the Suisun Marsh, which is a National Wildlife Refuge
7 area.

8 I think all of that is something that the Department of
9 Health Services should look into and not just I.T.

10 Mr. Chairman, could I ask just one more question?

11 CHAIRMAN ROBERTI: One more question.

12 SENATOR KEENE: Clarification of the Director.

13 Were you aware of the conversation that was described by
14 the Mayor of Benicia and Dr. Hoenig of your office?

15 DR. KIZER: No, and it's not Dr. Hoenig, I don't
16 believe.

17 SENATOR KEENE: Mr. Hoenig. You weren't aware of that
18 conversation?

19 DR. KIZER: That is correct. I know that staff has had
20 a number of conversations with the officials in Benicia, but as
21 far as this specific one which she referenced, no.

22 SENATOR KEENE: Would you have authorized the kind of
23 conversation described?

24 DR. KIZER: No.

25 SENATOR KEENE: Did you fail to return two phone calls
26 as requested by the Mayor of the city adjacent to a Class I toxic
27 waste site?
28

1 DR. KIZER: I must say that I can't recall who called me
2 last September, whether the Mayor or anyone else several months
3 ago.

4 I do know that I get a large volume of phone calls every
5 day, and that I routinely have a number of other people respond
6 to them just because there isn't enough hours in the day to
7 answer all those phone calls.

8 SENATOR KEENE: When Mr. Hoenig indicated that he was
9 going to speak to you, and when Mr. Hoenig was the first person
10 who responded after two phone calls made to you, shouldn't the
11 Mayor naturally assume that the communication from Mr. Hoenig was
12 yours or authorized by you?

13 DR. KIZER: I don't think I can speak for the Mayor.

14 SENATOR KEENE: If you were in her shoes, would you have
15 assumed that the authorization had come from you?

16 DR. KIZER: I don't know whether I would or wouldn't
17 have.

18 SENATOR KEENE: But you disavow that authorization at
19 this time?

20 DR. KIZER: Yes, I do.

21 SENATOR KEENE: Thank you.

22 CHAIRMAN ROBERTI: Any further questions?

23 Anyone in the audience in support or opposition of Dr.
24 Kizer's confirmation?

25 Then the matter of the confirmation is before the
26 Committee.

27 SENATOR DOOLITTLE: Move confirmation, Mr. Chairman.
28

1 CHAIRMAN ROBERTI: Senator Doolittle moves confirmation
2 be recommended to the Floor.

3 SENATOR MELLO: Mr. Chairman, in light of the full
4 discussion that we've had on this, I think there's a lot of
5 questions on many Members' minds. We do have all the
6 transcripts, but I think some Members would want to read them
7 prior to taking action on the Floor.

8 I think that Dr. Kizer has until the 11th of March.

9 I would like to move a substitute motion that we send
10 his name to the Floor without a recommendation, and that it would
11 be taken up prior to the expiration of his term, which would be
12 March 11th, at the appropriate meeting that the Pro Tem would
13 decide to bring it up.

14 CHAIRMAN ROBERTI: Senator Mello moves a substitute
15 motion that the nomination be resubmitted to the Floor without
16 recommendation by the Committee.

17 On the motion, Senator Petris.

18 SENATOR PETRIS: Why don't we just hold it a week here
19 to give us time to read everything?

20 I had a couple more questions on the aldicarb thing that
21 we didn't complete last time. Not lengthy, very brief.

22 I have two requests: One, to ask the questions; and the
23 other, I think it might be more helpful if we put our action over
24 until next week. We still have a week or more for the Floor
25 decision to be made, giving all Members a chance to check out
26 whatever information they'd like.

27

28

1 SENATOR MELLO: It's up to the Committee. I was just
2 trying to back up the dates. If we hold it one more week, that
3 would mean it would come before our Committee on the 5th of
4 March, and that would only leave probably the following Thursday
5 or the following Monday for taking it up prior to the 11th. It
6 wouldn't leave the Members much time, if they do want to get into
7 the transcripts.

8 SENATOR PETRIS: Well then, sometime in between.

9 SENATOR DOOLITTLE: Are we going to have a fourth
10 hearing, Mr. Chairman?

11 CHAIRMAN ROBERTI: That's what we're discussing.

12 SENATOR MELLO: Senator Petris, another option would be
13 to take it -- not to have a hearing, but to take up the matter
14 that we would consider on Wednesday, unless you want to ask --

15 SENATOR PETRIS: That's right, we're meeting again
16 Wednesday. I was thinking this was our regular meeting.

17 Yes, that would be suitable I would think, Mr. Chairman.

18 CHAIRMAN ROBERTI: Let me say what my mind is on the
19 subject, then we'll hear appropriate motions.

20 Right now the motion before us is Senator Mello's
21 substitute motion that the nomination be resubmitted to the Floor
22 without recommendation by the Committee.

23 If I just might, and I recognize Senator Petris would
24 like to hold it until Wednesday, I'd like to speak on Senator
25 Mello's motion, however, and you keep your motion in abeyance.

26 Where my mind is on the subject right now is, and this
27 really doesn't go to whether we should put this over until
28

1 Wednesday or not, that is on the positive of Dr. Kizer's
2 confirmation, first, Dr. Kizer has extensive background in the
3 area of toxicology and medicine.

4 Many of the observations or accusations against him go
5 to the general issue of dragging his feet in the administration
6 of the programs, and there have been some thoughts on this
7 subject that this may be for political purposes.

8 There frankly in my mind is nothing in the doctor's
9 background that makes him a political operative. Now, that
10 doesn't mean I agree with his decisions, but I think that is an
11 important point as to what his motivation has been for the
12 decisions he's made.

13 The question of the closeness of the administration with
14 dump site owners, I think, is a very important question. And I
15 think that is one that has to be discussed and debated vigorously
16 both in the Legislature and during the coming election.

17 I do not myself feel that that goes to the issue,
18 however, of Dr. Kizer's confirmation, or at least I haven't heard
19 anything yet that would indicate it goes to the issue of Dr.
20 Kizer's confirmation.

21 An important point that was raised in last week's
22 hearing was the matter of who authorized Dr. Kizer's appearance
23 before the EPA in Washington, D.C. Dr. Kizer indicated that that
24 was Mr. Scotland.

25 I have spoken to the Governor's Office. They indicate
26 that that was a routine decision authorized by Mr. Scotland.

1 Once again, what Mr. Scotland may have known or not
2 known is not an issue, I would say, that goes to Dr. Kizer's
3 confirmation. It may be an issue as to what goes on in the inner
4 sanctum of the Governor's Office, but that unfortunately is not
5 something which I think reflects upon Dr. Kizer's confirmation.

6 Now, therefore, on the positive side of Dr. Kizer's
7 confirmation, we have first his extensive background. Second,
8 the question of ethics touching the doctor himself regarding his
9 motivations I do not think has been, in my mind, effectively
10 raised.

11 That does not mean that the decisions that have been
12 made, including the matter of the closeness of the administration
13 to dump site owners, is something that either I or my colleagues
14 take lightly. We do not. We think they're important questions
15 that have to be thrashed about, but they are not questions that
16 relate specifically to the confirmation of Dr. Kizer. They go to
17 other people's influence and will to administer these
18 environmental law effectively.

19 On the negative side -- and on the positive side of Dr.
20 Kizer's confirmation, which I think is critically important, and
21 that is I think the Governor has an obligation and a right to set
22 his own administration in order as he chooses, and let the public
23 make decisions based on how he sets his administration in order.
24 Because the ultimate decisions rest with the Governor and not
25 with the Department of Health.

26 Now, we have not adhered to that in all cases, but the
27 question is whether the reasons for our not adhering to that
28

1 overrides the basic presumption that a governor has a right to
2 set his administration in order as he chooses.

3 On the negative side are some of the decisions,
4 specifically that have been made by the Department and have been
5 raised in these hearings. The latest today is the fact that
6 Senator Keene indicates that RCRA authority, for some reason, and
7 I think that reason goes at least to some degree to the
8 effectiveness of the Department, has been lifted by the
9 Environmental Protection Agency.

10 Number two is that I do not agree with the decision of
11 the Department of Health in overriding its own staff
12 recommendations on the use of aldicarb; although I tend to think
13 that's a policy decision that has to be debated in the
14 administration and in the Legislature. It's just the kind of
15 policy decision upon which the public makes the ultimate decision
16 as to whether or not they want to retain the administration.

17 However, it was a serious decision, and one which I
18 might indicate that I think the decision was in error.

19 On the Benicia and the Casmalia dump sites, I think that
20 enforcement of the law is apparently rather slow.

21 SENATOR KEENE: Mr. Chairman on that one specific point,
22 even as we sit here, the Director is denying to Senator Hart and
23 myself with respect to our districts. When a jurisdiction
24 requests it, they refused to hold a hearing pursuant Section
25 25149 of the Health and Safety Code. They will not do it. This
26 is a flat refusal even as we sit here, even as the Director is
27 seeking confirmation. We cannot get that hearing.
28

1 DR. KIZER: I think that if you request it, then we will
2 address that issue.

3 I think your statement's a little general at this point.

4 SENATOR KEENE: How could I be more specific? We want a
5 hearing pursuant to Section 25149.0 of the Health and Safety Code
6 known as a 501 hearing because it was carried as SB 501. The
7 section your counsel referred was not part of SB 501. That is
8 the hearing we want. I'm trying to be as specific as possible.

9 If the City of Benicia requests it, will you grant it?
10 That's a simple question. It's a direct question. It's a
11 specific question.

12 What is your answer?

13 DR. KIZER: Well as I've said already today, if the City
14 requests it we will grant them the 501 hearing.

15 I'm not in a position to debate the sections and all
16 that. It's just not something that I'm conversant enough in at
17 this point to --

18 SENATOR KEENE: But your counsel responds that we will
19 grant you a hearing to some other section which was not part of
20 SB 501, and that is 25149.3.

21 DR. KIZER: I think the point is that we will look at
22 that request and Counsel's advice, and whatever other advice is
23 appropriate will be taken into consideration, and I'll render the
24 decision.

25 SENATOR KEENE: The point is, Counsel is sitting next to
26 you right now and can tell you very well what it is that we're
27 seeking, and that your answer is: We'll see.
28

1 Now, I know what the we'll see turns into once the
2 Committee puts you out. The we'll see is good-bye.

3 MR. MARLIN: Senator, my comments, since they're being
4 referred to, were to the appropriateness of the given sections.
5 They have different relief attached to the different sections and
6 different hearings and different burdens of proof.

7 What we are asking for is a specific request from the
8 City so that we can evaluate which is the most appropriate
9 section to hold the hearing under.

10 SENATOR KEENE: The specific request is coming from me
11 right now and says if the City of Benicia asks for a hearing
12 pursuant to Section 25149.0, will you grant it? And will you
13 grant it in Senator Hart's case?

14 MR. MARLIN: Regarding the issue of the Benicia
15 landfill, specifically the relining of the ponds and any land use
16 that is proposed -- any new land use that is proposed by the City
17 of Benicia? Is this the issue?

18 SENATOR KEENE: That's the issue.

19 MR. MARLIN: Then the appropriate -- my reading of the
20 statute, once again it's merely an opinion and it's the Director's
21 decision, is that 25149.3 is the appropriate remedy.

22 SENATOR KEENE: Section 25149.3 maybe the appropriate
23 remedy with reference to what you just said, but it is not one
24 that assures the over all health and safety of the dump, which is
25 what we want you to look into, what you're supposed to do.

26 You're Director of Health and Safety. You're trying to
27 get confirmed for that. You're not Director of Toxic Waste
28 Dumps. You're Director of Health and Safety.

1 The people are asking you for a hearing, 25149.

2 MR. MARLIN: What I'm trying to say is, once we have a
3 specific request of what action you would like to see done at
4 that site, we will be be able to better evaluate what the proper
5 section is.

6 SENATOR KEENE: We would like to know whether the
7 operation of the site constitutes a substantial danger to public
8 health and safety.

9 Is that too much to ask?

10 DR. KIZER: I have no problem holding these hearings. I
11 am reluctant, as you no doubt gathered, to agree to any
12 particular reference to the Code because I don't feel conversant
13 enough with the different section to speak with authority on
14 that.

15 But as far as the general issue of holding this, I have
16 no problem, and if that's requested, unless there's some
17 overriding reason why that is inappropriate and we can't come to
18 terms on that, then I'd see no reason why we wouldn't have it.

19 SENATOR KEENE: Mr. Chairman, respectfully, that's a
20 refusal.

21 DR. KIZER: I don't see how you can construe it as that.

22 CHAIRMAN ROBERTI: How do you construe that as a
23 refusal?

24 SENATOR KEENE: Because Counsel will direct the lesser
25 form hearing of 25149.3 rather than the full-fledged hearing on
26 public health and safety of the operations of the dump, which --

27

28

1 CHAIRMAN ROBERTI: Will you please clarify one more time
2 what are the difference between the two hearings?

3 MR. MARLIN: The major difference -- several
4 differences. One is that under 25149, as the Senator already has
5 pointed out, the scope of the relief is much broader; that is,
6 that it can be essentially any matter that -- essentially both
7 sections deal with the delegation of the State's responsibility
8 over hazardous wastes to local authorities.

9 The 149 section states that purposes -- that local
10 entity may enact, issue, enforce, suspend, revoke or modify any
11 ordinance, regulation, law license, or permit relating to
12 existing hazardous waste facilities.

13 Whereas, the other Section 25149.3, is much more focused
14 in its approach and deals with --

15 SENATOR KEENE: It's much narrower --

16 MR. MARLIN: It deals with general plan amendments --

17 SENATOR KEENE: Mr. Chairman --

18 MR. MARLIN: -- zoning change or the imposition of
19 conditions on the use of property.

20 As I said --

21 CHAIRMAN ROBERTI: You're saying, however, the Director
22 has the discretion to do either?

23 MR. MARLIN: That's correct.

24 CHAIRMAN ROBERTI: Then why in the world, just to make
25 everybody happy, can't the Director give a hearing for both
26 Casmalia and Benicia on the .0?

27 DR. KIZER: I think I've already responded to that.
28

1 CHAIRMAN ROBERTI: And your response is that you will?

2 DR. KIZER: We can hold them.

3 SENATOR KEENE: You can hold them or you will hold them?

4 DR. KIZER: I'm sorry for that imprecision, Senator. We
5 will hold them.

6 SENATOR MELLO: Mr. Chairman.

7 CHAIRMAN ROBERTI: I'm taking that to read the Director
8 said that he will hold hearings on the .0 type of 501 hearing on
9 Casmalia and Benicia, and taking that as a positive.

10 Let me continue with my last remark --

11 SENATOR KEENE: Thank you.

12 CHAIRMAN ROBERTI: -- on the Monterey Park dump site.

13 Once again, I think that was a specific policy decision
14 which I frankly disagree with, but once again, these policy
15 decisions are questions that ultimately have to be decided by the
16 public as to whether they want an administration which is more
17 water tight and more air tight on these environmental and toxic
18 questions. Or do they want an administration which will permit
19 more leeway, to be generous in my observation of those decisions.

20 The question goes to a subjective determination as to
21 what is proper, and in the last analysis, these are decisions and
22 a policy set by the highest levels of the administration and are
23 questions that the public has to determine.

24 The narrow focus that the Senate Rules Committee has
25 before us is whether the Director of Department of Health is, by
26 experience and by ethics and by much broader policy guidelines,
27 qualified to assume these positions.
28

1 The way that we balance the environment against business
2 considerations are questions the public is going to have to
3 answer when they vote in November.

4 With that in mind, based on my long monologue, but I
5 think it's very, very important to set what my motivations are in
6 casting my vote, I intend to vote for Senator Mello's motion to
7 resubmit Dr. Kizer's name to the Floor without recommendation.

8 However, Senator Petris, now your point is before us.

9 SENATOR MELLO: Mr. Chairman, might Senator Petris yield
10 for --

11 SENATOR PETRIS: Yes.

12 SENATOR MELLO: Might I suggest that I have my motion be
13 put in abeyance temporarily and allow Senator Petris to ask his
14 questions on aldicarb while everyone's here? Then we can decide,
15 once the questioning is completed, then my motion would be
16 proper.

17 CHAIRMAN ROBERTI: Thank you.

18 SENATOR DOOLITTLE: I have an unusual request.

19 Unless these are brief questions, brief responses, I
20 have an appointment that I must go to.

21 Could we open the roll and allow me to vote and put it
22 on call?

23 CHAIRMAN ROBERTI: Well, since we really don't know what
24 the motion's going to be --

25 SENATOR DOOLITTLE: I'll withdraw my motion.

26 SENATOR PETRIS: This will be brief.

27 SENATOR DOOLITTLE: All right.

28

1 CHAIRMAN ROBERTI: When do you have to leave?

2 SENATOR PETRIS: Ten minutes ago?

3 SENATOR DOOLITTLE: Ten minutes ago.

4 CHAIRMAN ROBERTI: Then when are you going to come back?

5 SENATOR DOOLITTLE: At 1:30.

6 CHAIRMAN ROBERTI: Well, what we could do is, we could have
7 the motion, and then I'd be glad to recess and leave the roll
8 call open during the recess, and we can reconvene for you if your
9 vote's required.

10 SENATOR PETRIS: Mr. Chairman, thank you.

11 I just want to get back to aldicarb.

12 At the close of the last meeting, we were just starting
13 to go into a memo from the Department of Food and Ag, written by
14 Sewell Simmons -- it was mentioned by Senator Torres -- he's Pest
15 Management Specialist, Pest Management Analysis and Planning
16 Program.

17 The memo was written to Ronald Oshima, the Branch Chief.
18 And it goes to the question that I asked you about before on
19 aldicarb and the differences in the two memos, and why it seemed
20 to be watered down from the first circulating memo to the second
21 one, the difference being suspension being reduced to
22 reevaluation.

23 Now, you pointed out that the staff had not looked into
24 the alternatives and whether or not they were suitable, in fact
25 whether they might even be worse than aldicarb.

26 Now, this memo is dated January 16. I don't know if
27 you're familiar with it?

28

1 DR. KIZER: No, I'm not, nor --

2 SENATOR PETRIS: What it does, it describes what
3 aldicarb is used for, and it lists the various uses.

4 I'll run through them quickly: cotton, sugarbeets,
5 potatoes, dry beans, commercial greenhouses, commercial field
6 grown and nursery plantings, seed alfalfa, citrus, sorghum and
7 sweet potatoes.

8 And it says, and I'm trying to hasten this, summarize
9 it, what the author here says is that there are suitable
10 alternatives to aldicarb in all but two pest management areas,
11 one of them being the nursery plantings. The ones that concern
12 him are fruit trees and one other one in the nursery and seed
13 alfalfa. And he says you could take those two out, but we should
14 continue to use aldicarb where the food is not affected anyway.

15 There is a long list of alternatives under each one of
16 these articles, I mean, each one of these plants. Sugarbeets,
17 for example, has -- I haven't counted them -- but at the bottom
18 of the page, I'll show it to you after, there's a long list of
19 what he describes as suitable alternatives. The same is true of
20 cotton, which is not a food of course; the same is true of
21 ornamentals, of alfalfa. Sweet potatoes has a much shorter list,
22 but even for the shortest list there are seven alternatives
23 listed; citrus it looks like 30 or more; potatoes, another long
24 list; and beans.

25 I'm wondering, number one, if you're familiar with this
26 memo?

27

28

1 Number two, if not, if you would examine it and see if
2 you can react off the top of your head to whether any of these
3 alternatives are clearly dangerous or undesirable?

4 What I'm getting at is, there seems to be opinion within
5 the Department of Food and Ag that we can live without aldicarb
6 on all of these products. The disadvantage being that some of
7 them have to be applied more than once, more times than aldicarb,
8 and that means it would cost more.

9 That seems to be the only negative. Doesn't last as
10 long and therefore has to have more applications.

11 And you mentioned that yourself. You said some of the
12 alternatives -- or rather Mr. Van Nes did -- mentioned that some
13 of them would require more applications.

14 So, I guess what I'd like to do is ask you to just take
15 a quick look at this and offer your reaction. It may be unfair
16 if you're not familiar with it at all.

17 It seems to suggest that alternatives have been
18 considered somewhere. Maybe not in your shop, but in Food and
19 Ag's shop. And it seems to indicate fairly strongly that they
20 can live without aldicarb on all these things.

21 I'd like to know what the story is on this?

22 DR. KIZER: If the Sergeant will give me the memo, I can
23 respond to that.

24 To answer your first point, no I am not familiar with
25 that memo.

26 I have been, as I think I've previously indicated,
27 advised by the Department of Food and Agriculture management that
28

1 there are alternatives. Many of the alternatives would mean much
2 greater application of compounds and that we don't' know -- that
3 the data gaps on those compounds are generally as large or larger
4 than what is the data gaps on aldicarb.

5 SENATOR PETRIS: Of course, what I'd like Mr. Van Nes to
6 do for us is to go down that list and mark those for which the
7 data gaps are still gaps for my own information, if no one
8 else's. I don't mean right now, but as soon as you get your
9 people, it would be helpful in this part of our hearing.

10 DR. KIZER: I might must notice that going down the
11 list, and I can't speak to the toxicology of these rather long
12 lists, but that I notice Monitor and Trithion, and some of these
13 others are teratogenic, and as I believe that it's also a suspect
14 carcinogen.

15 SENATOR PETRIS: Do you see any that don't have that
16 problem that would be acceptable?

17 DR. KIZER: As I say, I can't speak to all of the
18 toxicology of this long list here, and I guess it gets back to a
19 couple of the points that have been made on a number of occasions
20 at least.

21 I'm concerned about the total volume of pesticides use
22 in this state in addition to what specific ones there are. I'm
23 not sure that it makes intuitively obvious sense to pour greater
24 quantities of pesticides on the ground if one in lesser
25 quantities can do an equal job.

26 Then the second point --
27
28

1 SENATOR PETRIS: Well, unless they have a very
2 substantial difference in their toxicity and their danger.

3 DR. KIZER: That gets us to the second point, where I
4 was going, is that if we know that both the acute and chronic
5 toxicity is less for all of the alternatives, or do we indeed
6 know that these are better or safer than aldicarb.

7 I think the point that has been made before is that we
8 don't know that, and two, we don't know exactly how these would
9 be used, but that we suspect they may be used in greater
10 quantities and more frequently, and they may over all increase
11 exposure to these compounds, all of which are hazardous.

12 SENATOR PETRIS: Let me ask Mr. Van Nes, then, how does
13 this writer reach the conclusions that he reaches? He doesn't
14 raise any danger signals at all about any of those alternatives.

15 I would think that if they were dangerous, that he would
16 at least flag those that are and say, you know, out of 45
17 alternatives for one particular plant, 30 are considered to be
18 safe and 15 are not, something like that.

19 Would you enlighten us on that?

20 MR. VAN NES: Senator, yes, I think I can..

21 At our last hearing this memorandum was raised just
22 before we adjourned. And I went back to the people that were
23 responsible for the memorandum. I specifically talked to Dr. Ron
24 Oshima, who heads our Environmental Monitoring Unit.

25 Basically what I'm told is that we a Medical Toxicology
26 Unit; we an Environmental Monitoring Unit, Worker Health and
27 Safety Unit, and a Registration Unit.
28

1 And the information from all of these units come
2 together into Registration to make decisions, the kind of
3 decisions that Dr. Kizer has been describing. In other words, we
4 do have to weigh the alternatives, and when the alternatives are
5 safer, they should be used. And we would both concur with you,
6 and our department would concur with you.

7 What's happening with this memorandum, as I understand
8 it in talking to the people who put the memorandum together, is
9 they aren't looking at the toxicological questions. All they
10 were asked to do was to say to the Registration and the Division
11 of Pest Management supervisors, are there alternatives. And what
12 this memorandum says is: Yes, there are alternatives, number
13 one, it's saying that.

14 Number two, it's saying that --

15 SENATOR PETRIS: Do they know anything about the
16 alternatives?

17 MR. VAN NES: Sure, we know something about the
18 alternatives.

19 SENATOR PETRIS: Why didn't they indicate it on the
20 memo?

21 I can think of one alternative. You can drop an atom
22 bomb on the place and you'd get rid of the bugs. That's an
23 alternative.

24 Would they list that?

25 MR. VAN NES: Well, I think that this is what I'm trying
26 to come to.

27

28

1 This particular unit's responsibility is to say what
2 does it take to give the farmers the tools they need to protect
3 against the bugs. That's all they're interested in. What tools
4 are there?

5 They are not medical toxicologists, and that's not their
6 job.

7 Then the Medical Toxicology Unit, DR. Kizer's people and
8 others, take over and say: Okay, let's look at these
9 alternatives, and are they safe?

10 Now, you know that from Dr. Kizer's February 3
11 memorandum, he asked Clare Berryhill, the Director of Food and
12 Agriculture, to reevaluate this material. That's what we're
13 doing. And reevaluation, then, has to look at these alternatives
14 and has to --

15 SENATOR PETRIS: Is that in process now?

16 MR. VAN NES: That's in the process.

17 SENATOR PETRIS: I think that answers my question.

18 Thank you.

19 CHAIRMAN ROBERTI: Fine.

20 Senator Mello's motion to --

21 SENATOR PETRIS: May I have the memo? Excuse me. It's
22 my only copy.

23 I'll be happy to make one and share it with you.

24 CHAIRMAN ROBERTI: -- to resubmit Dr. Kenneth Kizer's
25 name as the Director of the Department of Health Services to the
26 Floor without recommendation is before us.

27 Senator Keene.
28

1 SENATOR KEENE: I believe, but want to be sure, Dr.
2 Kizer, that you have agreed to grant a hearing pursuant to
3 Section 25149.0 at the request of the City of Benicia in the case
4 of I.T. or the County of Santa Barbara in the case of Casmalia.

5 Is that correct?

6 DR. KIZER: I stand by what I said.

7 SENATOR KEENE: Can you give me a yes or no?

8 DR. KIZER: If that is what was said, if the Court
9 Reporter would like to read back what was said before, then I
10 will stand by it. I don't recall what section it was you quoted
11 before.

12 I'm not trying to be difficult.

13 CHAIRMAN ROBERTI: It was point zero.

14 DR. KIZER: Okay, well, if that was what was quoted
15 before, then I will stand by what I said.

16 SENATOR KEENE: Then the answer is yes?

17 CHAIRMAN ROBERTI: Why don't you read it back?

18 (Thereupon the record was read.)

19 SENATOR KEENE: I hate to carry this even one step
20 further.

21 CHAIRMAN ROBERTI: What's the number of the point of
22 your section?

23 SENATOR KEENE: Health and Safety Code 25149.0.

24 CHAIRMAN ROBERTI: Section 25149.0?

25 SENATOR KEENE: Right.

26 CHAIRMAN ROBERTI: Let me ask Dr. Kizer: Will you
27 authorize and hold a hearing on Health and Safety Code 25149.0 on
28 the Casmalia and Benicia sites in a reasonable period of time?

1 SENATOR KEENE: Perhaps 90 days?

2 CHAIRMAN ROBERTI: We're talking about two sites. I
3 would say reasonable would be 120 days, in my layman's
4 estimation.

5 DR. KIZER: Yes. Were you waiting for me to respond?

6 CHAIRMAN ROBERTI: Yes.

7 Dr. Kizer responds yes, and that is about as clear as
8 can be.

9 The motion is now before us.

10 SENATOR KEENE: Thank you.

11 CHAIRMAN ROBERTI: That is Senator Mello's motion for
12 resubmission of the nomination without recommendation.

13 An aye vote will vote to resubmit the name without
14 recommendation. A no vote will leave us open to another motion,
15 but is not necessarily a vote against Dr. Kizer's recommendation
16 to the Floor, or rather resubmission to the Floor.

17 The Secretary will call the roll.

18 SECRETARY WEBB: Senator Doolittle. Senator Mello.

19 SENATOR MELLO: Aye.

20 SECRETARY WEBB: Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Senator Craven.

23 SENATOR CRAVEN: No.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 Senator Doolittle wants to be recorded. In deference to
27 the Senator, this is an important vote, Senator Mello moves that
28

1 the roll be help open until the adjournment of Session or two
2 p.m., which ever comes later.

3 Without objection, such will be the order.

4 The Committee is now recessed.

5 (Thereupon this Hearing before the
6 Senate Rules Committee was recessed
7 at approximately 12:40 P.M.)

8 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

26th day of February, 1986.


EVELYN MIZAK
Shorthand Reporter

L500
R9
1986
no. 4

HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

Legislative

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 26, 1986

1:55 P.M.

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1 HEARING

2 SENATE RULES COMMITTEE

3 STATE OF CALIFORNIA

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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16 WEDNESDAY, FEBRUARY 26, 1986

17 1:55 P.M.

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26 Reported by:

27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

1 SENATOR DAVID ROBERTI, Chairman
2 SENATOR WILLIAM CRAVEN, Vice-Chairman
3 SENATOR JOHN DOOLITTLE
4 SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

6 SENATOR HENRY MELLO

STAFF PRESENT

8 CLIFF BERG, Executive Officer
9 PAT WEBB, Committee Secretary
10 RICK ROLLENS, Consultant on Bill Referrals
11 NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

13
14 WILLIAM BOWERSOCK, Member
Teachers' Retirement Board
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I N D E XPage

Proceedings

1

Governor's Appointees:WILLIAM BOWERSOCK, Member
Teachers' Retirement Board

1

Questions by SENATOR PETRIS re:

Conflicts of Interest

3

Unfunded Liability

4

California-limited Investments

5

Prudent Expert Rule

6

Decision Responsibility

7

Defects or Changes Needed

8

Motion

9

Committee Action

10

Termination of Proceedings

10

Certificate of Reporter

11

P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The next item on the agenda is Governor's Appointee appearing today, William Bowersock, Member of the Teachers' Retirement Board.

MR. BOWERSOCK: I'm William Bowersock.

CHAIRMAN ROBERTI: Mr. Bowersock, we'll ask you the same thing we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. BOWERSOCK: Thank you, Mr. Chairman.

I'm not sure whether you all have my resume, so I'll operate on the assumption that you do.

And basically my professional career began in '65, when I joined the Group Insurance Department of the Prudential Insurance Company. And I served with them until 1971 in their northern New Jersey operation in Newark, mainly working with corporate Taft-Hartley and public employee retirement systems in the four northern counties of northern New Jersey.

In 1971 I was transferred to the San Francisco group office as the person in charge and ran that office with responsibility for Northern California marketing until '79, when I became a Senior Account Executive with the responsibility for large group insurance accounts in Northern California.

In 1980, I was promoted to a functional Vice President. In '81, I left the Group Insurance Department and joined the Group Pension Department of Prudential. Initially my assignment was marketing for new clients in half of Northern California, Oregon, Washington and Alaska.

1 In 1984, Prudential reorganized and instead of just
2 being an insurance company, they set up several subsidiaries.
3 One was the Prudential Investment Corporation. The Prudential
4 Investment Corporation was responsible for maintaining control of
5 all of the investment activities and disciplines of Prudential,
6 and the Group Insurance Department became a subsidiary of that
7 corporation.

8 About three months later that corporation or department
9 reorganized into what is known as Prudential Asset Management
10 Company. We consolidated our regional offices into three, and I
11 moved from the regional setup to a national accounts group that's
12 headquartered in Newark, New Jersey with a satellite office in
13 San Francisco.

14 My responsibility there is to work with the large public
15 funds west of the Mississippi, and my title is Vice President of
16 Public Funds. My responsibilities are with those 44 funds west
17 of the Mississippi, plus the Alaskan permanent fund.

18 Professionally, I'm C.L.U., which is a Chartered Life
19 Underwriter in the insurance venue of my disciplines. I'm also
20 enrolled in the Chartered Financial Analysts Program and working
21 my way through there, which is an educational as well as a
22 professional designation program.

23 I'm also N.A.S.D. qualified, plus state license for life
24 and disability as well as variable annuities.

25 Civically I've served on some boards in the County of
26 Marin, where I live, the Hospice of Marin. I've also been senior
27 warden of my church and served on finance committees there and
28 chaired other organizations in the county.

1 I guess the question of my other qualifications, or the
2 first question I had when I was asked if I would serve on the
3 Teachers' Retirement Board was regarding conflicts of interest.

4 And in discussing that with the Governor's Office, my
5 analysis of the approach is that the System uses consultants and
6 staff to initially generate lists of potential people they may
7 choose to do business with. From that list they cull down to
8 three or four finalists which are then brought to the Board for
9 the interview process.

10 If my company or one of our subsidiaries or in any way
11 anything that would appear to be a conflict was involved as one
12 of the finalists, I'd abstain from voting and if necessary on the
13 advice of counsel -- we have a fiduciary counsel at STRS -- I'd
14 absent the whole discussion as far as that's concerned.

15 That's basically who I am.

16 CHAIRMAN ROBERTI: Thank you very much, Mr. Bowersock.

17 Any questions? Senator Petris.

18 SENATOR PETRIS: You answered the first on on the
19 conflict.

20 It's really a disadvantage to your own company as well
21 if the opinion of the Board is that out of four or five
22 possibilities, your company would have the best, and you'd feel
23 constrained to stay out. And if it's a close vote, they could
24 lose out because of your lack of participating. So the conflict
25 doesn't only show a problem for the State. It might be a problem
26 for your company down the road.

27

28

1 I suppose they thought of that, and they haven't tried
2 to dissuade you from serving?

3 MR. BOWERSOCK: I believe they've addressed that.
4 Initially as soon as I was asked, I first of all contacted my
5 company and had our legals review it from their point of view to
6 see if there was a conflict of interest and the answer was no.

7 Yes, we could be at a disadvantage.

8 SENATOR PETRIS: But you could be in some situations,
9 and the disadvantage of it goes both ways.

10 MR. BOWERSOCK: Yes.

11 SENATOR PETRIS: The fund has what? Ten billion in
12 unfunded liability now?

13 MR. BOWERSOCK: Approximately, yes, about four is due to
14 past service, and six is due possibly to the difference in the
15 ongoing contributions received versus the actuarially stated
16 needed percentage of payroll, which is 17.64 versus 16 percent.

17 SENATOR PETRIS: Now, the earnings last year were 1.4
18 billion. How much of that, if any, is applied to reduction of
19 the unfunded liability?

20 MR. BOWERSOCK: Normally what happens, Senator, is if
21 you have any pop in funds, or they look at a 40-year vesting
22 approach for liquidation of this liability and prorate it over
23 that. It would have an impact, but --

24 SENATOR PETRIS: Are we on a 40-year schedule now?

25 MR. BOWERSOCK: Yes.

26 SENATOR PETRIS: Beginning when?
27
28

1 MR. BOWERSOCK: It's been ongoing in developing the
2 funding schedule necessary to hopefully take care of the past --

3 SENATOR PETRIS: Is it always 40 years ahead that we
4 look, or is that being reduced?

5 MR. BOWERSOCK: Well, it's reviewed very two to three
6 years, and the last review set the System to try and recoup the
7 unfunded liability plus the current funding deficit over a
8 40-year period.

9 SENATOR PETRIS: Do you know if any of it was reduced
10 this past year, '84? Was there any reduction in '85?

11 MR. BOWERSOCK: There may have been, but I really don't
12 know because we've changed actuaries and are addressing it now.
13 So, I couldn't speak, but I think the performance has to have
14 helped in some degree to ameliorate the deficit, but I couldn't
15 specifically say what it would be.

16 SENATOR PETRIS: Do you have any feelings on whether
17 investments should be limited to the State of California? I
18 notice the Board has made some in other states: Portland,
19 Seattle, in real estate up there.

20 MR. BOWERSOCK: In any investment the key decisions are
21 asset allocation: how much you put into different types of
22 investments. And the second is when you choose a particular type
23 of investment, to diversify.

24 So, to the degree that you want to look to California
25 for best real estate investments, it's also very prudent to
26 invest outside of the State so that you're not subject to
27 geographic trends in real estate. Real estate is such a property
28

1 specific and each type of thing specific type of an investment
2 that it would be dangerous to limit everything to California.

3 SENATOR PETRIS: So, you feel it is prudent to go out to
4 other states?

5 MR. BOWERSOCK: Definitely.

6 SENATOR PETRIS: We have a statute that was amended,
7 Prop. 21. You know, we had a proposition on the ballot on
8 adopting the prudent expert rule.

9 Can you tell us what that is? What's a prudent expert?

10 MR. BOWERSOCK: I think a prudent expert is an
11 individual who operates using the best advice available to make a
12 decision that would meet the constitutional responsibilities of
13 the fiduciary under the retirement system of the State of
14 California, which is diversified benefits, maximized return,
15 reduce employer contribution, and most of all importantly,
16 provide the benefits to the members of the system.

17 SENATOR PETRIS: The fund, like so many other funds, has
18 had its ups and downs. We had people that were really sailing in
19 the stock market for a long time, and the State felt the only
20 investments allowed were in the stock market. Never used to
21 allow real estate, for example.

22 And all of a sudden, when so many stocks took a bath,
23 they sustained tremendous losses.

24 The question I have is: Who should be the person or
25 unit that bears the ultimate responsibility for the decision on
26 whether you go into this or that? Should it be the Board?
27 Should it be the professional consultants that are hired? Should
28 it be some part of the staff? Should it be a combination?

1 What's the best way for us to handle that as far as the
2 ultimate responsibility?

3 MR. BOWERSOCK: Well, ultimate responsibility, as I
4 understand Prop. 21, is to assign fiduciary responsibility to the
5 Board Members. Therefore, it's incumbent on the Board Members to
6 seek the best professional advice available to help them make the
7 investment decisions.

8 I think if they do that, they avoid really any liability
9 of making what I might call specific investment decisions on a
10 specific thing, because professionals wouldn't say that that was
11 a good idea. You wouldn't make a so totally specific investment
12 that you'd get in trouble.

13 And it is true that people lost money in the equities,
14 but with the deficit situation that we have at STRS, we really
15 have to look to the total equity market to generate the excess
16 returns that we're going to need to overcome this deficit. So we
17 are shifting more and more to equities and have done so very
18 fortunately in the second half of '85, which is what has helped
19 generate some of the excess returns.

20 SENATOR PETRIS: Meaning what, real estate?

21 MR. BOWERSOCK: No, into equities meaning stocks.

22 SENATOR PETRIS: Stocks.

23 MR. BOWERSOCK: We also have increased not actually in
24 the latter half of '84 but in early '84 there was a lot of equity
25 real estate purchased before I got on the Board, but we have not
26 bought much real estate lately. The market's been a little soft,
27 and I think, even though you don't try and market time real
28 estate, people are waiting for more propitious opportunities.

1 SENATOR PETRIS: How long have you been on there now?

2 MR. BOWERSOCK: Since September, Senator.

3 SENATOR PETRIS: Has this given you enough time to give
4 us an overview of your impression with respect to whether or not
5 you think there are some important changes that ought to be made?
6 Do you see any defects in the structure or in the line of
7 responsibility, or in any phase of it that we should know about
8 which might be built in by statute, for example?

9 MR. BOWERSOCK: I can't say that I do. I think what is
10 ongoing, it's a dynamic process that's going on in the Board.
11 And before I got appointed, most of my knowledge was basically by
12 the press. And I was somewhat concerned about joining the Board.

13 I've been very impressed by the investment staff, the
14 administrative staff, of the help they're getting.

15 They are making steps. They're currently doing some
16 things in the area of real estate consulting to properly focus
17 the Board. So, they're addressing things, and it's an ongoing
18 process.

19 I really don't see anything legislatively, other than a
20 fiduciary insurance which is something that may be addressed by a
21 captive company at some point.

22 SENATOR PETRIS: Do you think they need more latitude,
23 or do they have adequate flexibility now to do things that need
24 to be done?

25 MR. BOWERSOCK: I think they have flexibility to get the
26 job done.

27 SENATOR PETRIS: Thanks.
28

1 CHAIRMAN ROBERTI: Any further discussion or debate?
2 Any opposition?

3 SENATOR CRAVEN: Move.

4 CHAIRMAN ROBERTI: Senator Craven moves Mr. Bowersock's
5 nomination to the Floor, recommends it.

6 SENATOR CRAVEN: Yes, Mr. Bowersock, and he's a C&F man,
7 too.

8 MR. BOWERSOCK: C&F?

9 SENATOR CRAVEN: You said you're C.L.U. or C&F.

10 MR. BOWERSOCK: Oh, a C.L.U. is a Chartered Life
11 Underwriter, and I'm studying under the CF, which is --

12 SENATOR CRAVEN: C&F doesn't have any meaning to you?

13 MR. BOWERSOCK: Commerce and Finance, the school I went
14 through in Villanova.

15 SENATOR CRAVEN: That happens to be the school I went
16 through in Villanova, too.

17 MR. BOWERSOCK: Oh, thank you.

18 SENATOR CRAVEN: You have the same degree from the same
19 school that I have, so it's my pleasure to move you.

20 CHAIRMAN ROBERTI: Senator Craven moves you, and now
21 we've got to vote for you.

22 Secretary will call the roll.

23 SECRETARY WEBB: Senator Doolittle.

24 SENATOR DOOLITTLE: Aye.

25 SECRETARY WEBB: Senator Mello. Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Senator Craven.
28

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 Four to nothing, recommendation to the Floor is made.

5 MR. BOWERSOCK: Thank you very much, gentlemen.

6 (Thereupon this portion of the

7 Senate Rules Committee hearing

8 was terminated at approximately

9 2:30 P.M.)

10 --oo0oo--

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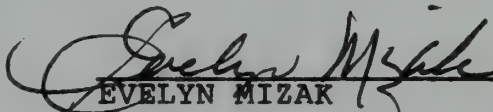
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

26th day of February, 1986.


EVELYN MIZAK
Shorthand Reporter

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16 WEDNESDAY, MARCH 5, 1986

17 2:25 P.M.

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26 Reported by:

27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR JOHN DOOLITTLE

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

VICTOR WISEHART, JR., Member
Youthful Offender Parole Board

I N D E X

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The next item on the agenda is Governor's Appointment of Mr. Victor Wisehart, Jr., Member of the Youthful Offender Parole Board. Please come forward.

We'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. WISEHART: I have tried to prepare myself, Senator, without knowing that I would eventually ask for this job, by attending college. I was in law enforcement for 35 years. I've handled youngsters in the secondary schools by being an instructor in driver education and driver training. I've also counseled juveniles as a police officer, also in the Department of Justice.

I know the judicial system pretty well. And I feel that in this job that there's still a chance to turn these young people around and make productive citizens out of them.

CHAIRMAN ROBERTI: Let me ask you a question.

When an offender comes before you for an initial hearing

--

MR. WISEHART: Yes, sir.

CHAIRMAN ROBERTI: -- and you have to make you decision, what circumstances would lead you to recommend placement with the Department of Corrections, or on the other hand, with the Youth Authority or with the county jail?

MR. WISEHART: If I understand you correctly, Senator --

1 CHAIRMAN ROBERTI: What are the criteria that you
2 operate on, both legally or subjectively?

3 MR. WISEHART: When they come before on the Youthful
4 Offender Parole Board, 's already been decided they've been
5 sent to the Youth Authority.

6 What we decide is if they're going to be placed on
7 parole or placed in a program for treatment and rehabilitation.
8 In that, you have to look into the records of what the offender
9 has done in the matter of violating the law. Also his
10 background, his support out on the streets from his family, his
11 friends, and from agencies, and his educational background.
12 There's a great many things that come into it.

13 Primarily you look at is he a threat to himself and
14 society. And at that point you try to determine the amount of
15 time that it will take to do a sufficient program depending of
16 their needs, whether it be drugs, or education, or vocational, or
17 psychotherapy, whatever you perceive their need to be, and
18 establish enough time to do these programs and turn them around.

19 We see them at an annual review once a year, and the
20 staff of the institution is allowed to bring them in front of us
21 at any time they feel that the young person is ready for parole
22 or a progress report, or anything.

23 The whole thing is aimed towards the turning around the
24 ward and getting him to be a productive citizen.

25 I hope that answers your question.

26 CHAIRMAN ROBERTI: Good answer.

27 Any questions of Mr. Wisehart? Senator Petris.
28

1 SENATOR PETRIS: Yes, just briefly.

2 I'm concerned about the over population. I understand
3 that the physical facilities are built for about 6,000, and we
4 now have 7,000.

5 We've been hearing this for years. I guess the over
6 crowding has been going on for quite a long time, and it's
7 increasing.

8 I guess the first question is, how did they all get
9 there?

10 I hear judges never convict anybody. If they do, they
11 don't send them up.

12 Where do these people come from? Are they from
13 Massachusetts?

14 MR. WISEHART: No, sir, they're from California.

15 SENATOR PETRIS: They come through our court system?

16 MR. WISEHART: Yes, sir, they do.

17 SENATOR PETRIS: Do they get convicted by juries?

18 MR. WISEHART: The juvenile goes to a juvenile court.

19 SENATOR PETRIS: Yes, to the juvenile court, and the
20 judge sends them up, I gather?

21 MR. WISEHART: Yes, he does.

22 SENATOR PETRIS: I just wanted to establish that for the
23 record.

24 MR. WISEHART: But Senator, if I may, there's a system
25 that takes place before that that establishes whether the ward is
26 a proper person for the Youth Authority, or whether they should
27 be on probation.
28

1 Most of the ones that we get in the Youth Authority
2 today are people that everything's been tried: probation, at
3 home, schools, camps, everything else. Nothing has worked.

4 SENATOR PETRIS: They're the worse problems of all?

5 MR. WISEHART: Yes, sir, and they come to the Youth
6 Authority.

7 SENATOR PETRIS: We often get complaints -- not often,
8 but I guess the most dramatic are emotional cases that somebody's
9 been let out of the Youth Authority too early.

10 How long have you been on this now?

11 MR. WISEHART: Approximately 8 months.

12 SENATOR PETRIS: Have you formed an impression as to the
13 adequacy of the length of terms? Are they too long, too short,
14 about right?

15 MR. WISEHART: Really, Senator, you can't say. Each
16 individual ward has to be treated as an individual. Some require
17 longer stays, some shorter, but to answer your question, the
18 parameters that we have to work with in some cases are sufficient
19 and in others they're not.

20 There are some cases for attempt murder, for instance,
21 as a Category, I believe, 4 or 5, and it should be moved up to a
22 Category 1 or 2, because attempt murder is just something that
23 the bullet ricocheted or God intervened or something else, and
24 you do need a little bit longer with these people than you would,
25 say for instance, somebody that was driving without a license.

26 SENATOR PETRIS: But you have a cap now imposed on you
27 by us in the statute that says you can't hold a minor beyond,
28 what is it, age 24, 25, no matter what he did.

1 MR. WISEHART: It depends whether it's superior court or
2 juvenile court. Yes, sir, there is a cap.

3 SENATOR PETRIS: Has the Board ever during your service
4 on it considered recommending an increase in that limit so they
5 can be held longer?

6 MR. WISEHART: No, sir. There are remedies for that:
7 1737.1 and 1800, that the ward can be sent back to court
8 depending on the violation.

9 I think personally --

10 SENATOR PETRIS: You mean when he's out on parole?

11 MR. WISEHART: No, sir. If he's still in the
12 institution and he's deemed a danger to society, they can be sent
13 back to the court depending on their original sentence if you
14 still have jurisdiction time.

15 SENATOR PETRIS: Let's say it's an aggravated murder
16 case. Normally the cap would kick in, and then it's age whatever
17 it is, 24 or 25.

18 How much longer would the court have authority to order
19 him to be reincarcerated?

20 MR. WISEHART: I think that depends on the sentence,
21 Senator, but some of them -- and I've seen a few -- that really
22 are in the mental state that they shouldn't be out. And there
23 should probably be an adjustment for some whose mental state
24 identifies them as a danger both to themselves and society.

25 But generally speaking, I believe that the time that we
26 have them is sufficient, in the broad sense. The one, or two, or
27 three or four that we have maybe there should be some provision
28

1 for taking care of them rather than putting them out on the
2 street.

3 For instance, we had one the other day that we were at
4 the end of the line. He was -- we were out of jurisdiction time
5 and out of confinement time. He didn't fit the parameters of
6 sending him back on a 1737.1 or an 1800, so we just had to put
7 his parole conditions very carefully so that he was under
8 observation and supervision and got his medications regularly and
9 everything else.

10 This is the type of case I'm talking about that probably
11 shouldn't be out there, but legally he has to be.

12 SENATOR PETRIS: That's the legally I'm talking about.
13 Should that be changed?

14 MR. WISEHART: Only after careful study.

15 SENATOR PETRIS: You see, we're under fire all the time.
16 I'm sure you feel the pressure more than we do because you're on
17 the hot seat there. But we get very frequent criticism from some
18 members of the public, from the press, that our laws are really
19 not adequate to take care of the problem, especially in cases of
20 the kind of youngster you're talking about who is tougher than
21 John Dillinger, and who commits murder, and is released after a
22 very short time.

23 And when the judges are criticized, the judges' answer
24 is: Well, look, that's the law; we threw the maximum book at
25 him.

26 And then your agency says the same thing: Given the law
27 under which we're working, we can't hold this person any longer.
28

1 I remember one case, the person committed -- he killed
2 both his parents. In a few years there he was, out.

3 Yet we have never had, as long as I've been on this
4 Committee, as request from your agency to make a change in the
5 law to accommodate that. Apparently over the years, the Youth
6 Authority has not felt that it was necessary to make changes.

7 MR. WISEHART: There is one thing that kind of
8 contradicts itself. We just sent a case to Los Angeles County.
9 I believe it was an 1800. And the law says that he has to be
10 programmable. In other words, when they come to the Youth
11 Authority, if they don't program or won't program, then the 1800
12 Section says they can't hold them because that person is not
13 programmable. They won't program.

14 And we got a pretty lengthy letter back from the Los
15 Angeles County District Attorney's Office to that effect.

16 Also, you have to prove that they will be a physical
17 danger to society when they're released.

18 I believe that you're right. It probably needs to be
19 reworked and some changes made.

20 In spite of all my time in law enforcement, I was in no
21 way prepared for the depravity of some of these crimes. I'm
22 shocked at the way the crimes are committed and the age of the
23 persons committing them.

24 SENATOR PETRIS: Getting younger and younger?

25 MR. WISEHART: Yes.

26 SENATOR PETRIS: Well I'll tell you, if you have a
27 solution, I know a lot of us here in the Legislature would love
28 to hear it.

1 MR. WISEHART: Because I just finished reading that, and
2 then there's another case -- and I don't think I'm endangering it
3 -- that was sent back and the judge refused the 1800. A week
4 later the person did the same thing, which was rape and brutally
5 beating the victim. And the perpetrator went back to the same
6 judge.

7 Now, the judge wasn't at fault, I don't believe. He
8 simply had to follow the law.

9 Maybe the laws should be changed, or a study made so
10 that it will collect these people who, for one reason for
11 another, shouldn't be out there because they are a danger both to
12 themselves and to society.

13 I wish I had the answer, Senator.

14 SENATOR PETRIS: Thank you.

15 CHAIRMAN ROBERTI: Any further questions of Mr.
16 Wisehart?

17 Hearing none, Senator Craven moves Mr. Wisehart's
18 confirmation be recommended to the Floor.

19 Any objection?

20 Hearing none, the Secretary will call the roll.

21 SECRETARY WEBB: Senator Mello. Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.

27 Call the roll one more time.
28

1 SECRETARY WEBB: Senator Mello.

2 SENATOR MELLO: With pleasure, aye.

3 CHAIRMAN ROBERTI: The vote is four to nothing;
4 confirmation is recommended to the Floor.

5 Congratulations.

6 MR. WISEHART: Thank you very much, gentlemen.

7 (Thereupon this portion of the
8 Senate Rules Committee hearing
9 was terminated at approximately
10 3:00 P.M.)

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

5th day of March, 1986.


EVELYN MIZAK
Shorthand Reporter

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27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

NONE

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLEN , Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

MARIANTHI K. LANSDALE, Member
Trustees of the California State University

DEAN S. LESHER, Member
Trustees of the California State University

NICHOLAS OSA, Member
Youthful Offender Parole Board

JESSE G. UGALDE, Director
Department of Veterans Affairs

SENATOR DANIEL BOATWRIGHT

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: The next item is Governor's Appointees appearing today, Marianthi K. Lansdale, Member of the Trustees of the California State University.

Ms. Lansdale, will you come forward. We'll ask you what we ask all the Governor's Appointees who appear before the Committee, and that is why you feel you're qualified to assume this position.

MS. LANSDALE: Because I have a very great commitment to higher education in the State of California. I will work very diligently to see that all the issues that come before me are carried out with fairness and to the best interests of the people of the State of California.

I'm very grateful for this opportunity to serve the State.

CHAIRMAN ROBERTI: Thank you very much, Ms. Lansdale. Are there any questions of Ms. Lansdale?

SENATOR CRAVEN: I would move the confirmation.

CHAIRMAN ROBERTI: Senator Craven moves the confirmation be recommended to the Floor.

Senator Petris, on the motion.

SENATOR PETRIS: Thank you.

You left out a very important qualification in looking over the background information.

You come from Long Beach.

MS. LANSDALE: Yes, I do.

1 SENATOR PETRIS: That's the home town of a certain
2 George Deukmejian; is it not?

3 MS. LANSDALE: I believe so.

4 CHAIRMAN ROBERTI: Also of Long Beach State College.

5 MS. LANSDALE: Right.

6 SENATOR PETRIS: Was the motion made?

7 SENATOR CRAVEN: Yes, sir, but I will rescind if you
8 would like to make the motion yourself.

9 SENATOR PETRIS: That's all right. I just wanted to be
10 on record as strongly endorsing.

11 SENATOR MELLO: Mr. Chairman, I have just one comment.

12 CHAIRMAN ROBERTI: Senator Mello.

13 SENATOR MELLO: On behalf of Senator Gary Hart, he
14 informed me that if we didn't confirm your appointment, that we'd
15 all be in deep trouble. And looking at your qualifications, I
16 agree with him.

17 MS. LANSDALE: Thank you.

18 CHAIRMAN ROBERTI: This is one of the easier ones, Ms.
19 Lansdale.

20 While we're on a high, the Secretary will call the roll
21 on Senator Craven's motion.

22 SECRETARY WEBB: Senator Doolittle.

23 SENATOR DOOLITTLE: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Petris.

27 SENATOR PETRIS: Aye.

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is five to nothing; confirmation is recommended
6 to the Floor.

7 Congratulations.

8 MS. LANSDALE: Thank you very much.

9 CHAIRMAN ROBERTI: Good luck.

10 Next is Dean S. Leshner, Member of the Board of Trustees
11 of the California State University.

12 MR. LESHNER: Senator, my name is Dean Leshner. I both
13 live and have my place of business in Contra Costa County.

14 I've been on educational commissions for 16 years. I've
15 been on State commissions for about 30 years.

16 I've given a library; I've given different other
17 buildings and so forth. Last year I gave \$75,000 worth of
18 scholarships to the State University system.

19 I've served on the Board of Governors of the community
20 colleges, prior term on the Board of Trustees of the State
21 University system.

22 I'm delighted to be back again. And my friend here has
23 pledged that if we build a new campus in Contra Costa County,
24 which we saved, the only campus saved, I'd give a million and a
25 half. And my wife is delighted that it's coming out of her
26 allowance.

27

28

(Laughter.)

SENATOR CRAVEN: Why does it have to be called a Boatwright campus?

CHAIRMAN ROBERTI: Senator Boatwright.

SENATOR BOATWRIGHT: Mr. Pro Tem and Members of the Committee, I'm very pleased to be here. And I'm sure Senator Petris wants to also say something later.

We had a day honoring Dean Lesher just recently, and we both spoke and both of us emphasized Mr. Lesher's dedication to education in California. And I'm talking now both about his dedication to public education in California as well as private institutions.

And I know of no other single individual who has really devoted as much time, but more than that, has devoted substantial sums of money to not only buildings, but more especially, to helping young people who are unable to help themselves because of circumstances, at least in our area, that they come from a background or an area where they're just not capable, or from families who are not capable of helping them go to college. He has financed their education.

And he has served in the past on the CSUC Trustees. He was known then, much to my surprise and gratification, as a person though holding personally rather conservative views, was very liberal in his approach to education. I only wish that a gentleman who served with him at that time -- and I can't think of his name now, the former Black chairman who was a very good friend of mine, and used to drop by because of our association --

1 always said that could count on Dean Lesher for a vote for
2 education of students in California.

3 It's absolutely amazing to me that he's one of the few
4 people I know who've been able to separate some of their personal
5 views and to really do what's good for education in California.
6 It's been good for our area, and I think Senator Petris realizes
7 that.

8 I'm just here to say that I think Dean Lesher would be a
9 tremendous asset to the Trustees, and I would like to see him sit
10 there.

11 MR. LESHER: Could I be humble enough to say that two of
12 the three newspaper publishers associations have given me an
13 exceptionally high award, one of them the Publisher of the
14 Decade.

15 My wife doesn't believe it, and I'm having difficulty
16 convincing her not to ask for a recount.

17 (Laughter.)

18 CHAIRMAN ROBERTI: Well, Mr. Lesher, your list of
19 charitable and educational activities is extensive and really
20 makes you one of the most qualified people we've had before us.

21 Now, I read your editorials every once in a while, and
22 they do give me indigestion once in a while, but --

23 (Laughter.)

24 CHAIRMAN ROBERTI: -- but, I think --

25 SENATOR BOATWRIGHT: He wrote a great editorial for
26 Senator Petris, I know that.

27

28

1 CHAIRMAN ROBERTI: But they're always quite literate.

2 (Laughter.)

3 CHAIRMAN ROBERTI: I have to forgive you all those
4 transgressions, however, because I note that you are a volunteer
5 in the La Traviata Auxiliary Music Center, and no self-respecting
6 Italian-American who loves opera could vote against you on that.

7 MR. LESHER: My wife writes religious songs and has
8 received awards for doing so.

9 CHAIRMAN ROBERTI: Very good.

10 MR. LESHER: She takes care of the religious end of it.

11 CHAIRMAN ROBERTI: So you're covered on all bases.

12 SENATOR PETRIS: Mr. Chairman.

13 CHAIRMAN ROBERTI: Senator Petris.

14 SENATOR PETRIS: I don't know if there are any
15 questions. If you're ready for a motion, I'd like to make it.

16 CHAIRMAN ROBERTI: Senator Petris moves that Dean
17 Leshner's confirmation be recommended to the Floor, Member of the
18 Board of Trustees of the California State University.

19 SENATOR PETRIS: May I point out that --

20 CHAIRMAN ROBERTI: Yes, Senator Petris, on the motion.

21 SENATOR PETRIS: Thank you.

22 I'd like to welcome my liberal friend back to the
23 education fold from which he never left.

24 I remember when he was on the Board before, and I want
25 to second what Senator Boatwright said. He really separates his
26 other outlook on other issues in our society and goes all out for
27 education. The record is clear as a Member of the Board of
28

1 Trustees and outside the Board of Trustees in his own personal
2 commitment and demonstrated support. It's been magnificent.

3 I think we're very lucky to have him be willing to serve
4 again. After all, he's served time on that board; it's a
5 headache. It requires an enormous amount of time and so forth.

6 But I think he wants to rebuild our part of the region
7 as the Athens of the West, and I welcome that move.

8 I'd be honored to place his name for confirmation.

9 MR. LESHER: Thank you, Mr. Chairman.

10 We have the only high school journalism classroom in our
11 building in Walnut Creek. We've had it now for 11 years, and it
12 does extremely well. It's accredited, by the way, by the State
13 and by the County.

14 CHAIRMAN ROBERTI: Senator Petris has moved.

15 Once again, is there any opposition that dares come
16 forward?

17 (Laughter.)

18 CHAIRMAN ROBERTI: Senator Craven.

19 SENATOR CRAVEN: I was just going to say, I'd like to
20 support an old Terrapin.

21 He will understand that, even though the rest of you may
22 not.

23 MR. LESHER: Thank you, sir. Yes, sir, I do understand
24 that.

25 SENATOR CRAVEN: It's a long time since College Park,
26 right?

27 MR. LESHER: That's right. I remember it very fondly.

1 SENATOR CRAVEN: Well, I noticed that on your resume.

2 MR. LESHER: Thank you, sir.

3 CHAIRMAN ROBERTI: Secretary will call the roll.

4 SECRETARY WEBB: Senator Doolittle.

5 SENATOR DOOLITTLE: Aye.

6 SECRETARY WEBB: Senator Mello.

7 SENATOR MELLO: Aye.

8 SECRETARY WEBB: Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Senator Craven.

11 SENATOR CRAVEN: Aye.

12 SECRETARY WEBB: Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 The vote is five to nothing; confirmation is recommended
15 to the Floor.

16 Congratulations. We look forward to working with you.

17 MR. LESHER: Thank you very much, sir.

18 SENATOR MELLO: You're welcome to move to Monterey Bay
19 any time.

20 (Laughter.)

21 CHAIRMAN ROBERTI: Next one is Nicholas Osa, Member of
22 the Youthful Offender Parole Board.

23 Mr. Osa, we'll ask you the same question we asked the
24 other Governor's Appointees: Why you feel you're qualified to
25 assume this position.

26 MR. OSA: I feel I'm qualified based on my background.
27 I've had 37 and a half years in the juvenile justice system, both
28

1 at the probation level and at the State level. And I've worked
2 in the capacity in State institutions as a parole agent, as a
3 supervising parole agent, and as a consultant with the California
4 Youth Authority.

5 And I think my overall background and my interest in
6 youth in the correctional system qualify me for the YOPB.

7 CHAIRMAN ROBERTI: Any discussion or debate? Any
8 opposition?

9 SENATOR CRAVEN: Move Mr. Osa's confirmation.

10 CHAIRMAN ROBERTI: Senator Craven moves Mr. Osa's
11 confirmation be recommended to the Floor.

12 These are simply easy ones.

13 Secretary will call the roll.

14 SECRETARY WEBB: Senator Doolittle.

15 SENATOR DOOLITTLE: Aye.

16 SECRETARY WEBB: Senator Mello.

17 SENATOR MELLO: Aye.

18 SECRETARY WEBB: Senator Petris.

19 SENATOR PETRIS: Aye.

20 SECRETARY WEBB: Senator Craven.

21 SENATOR CRAVEN: Aye.

22 SECRETARY WEBB: Senator Roberti.

23 CHAIRMAN ROBERTI: Aye.

24 The vote is five to nothing; confirmation is recommended
25 to the Floor.

26 Congratulations.

27 MR. OSA: Thank you very much.

1 CHAIRMAN ROBERTI: Last week the Appointee stayed here
2 for four hours, and it wasn't enough time.

3 SENATOR PETRIS: Maybe the if the Governor is listening
4 in, if he wasn't to send some people up today, this is the time.

5 CHAIRMAN ROBERTI: Finally, Mr. Jesse G. Ugalde,
6 Director of the Department of Veterans Affairs.

7 Mr. Ugalde, we'll ask you the same question, why you
8 feel you're qualified to assume this position.

9 MR. UGALDE: Thank you very much, Senator Roberti.

10 I think I'm qualified because basically I'm
11 mission-oriented and dedicated to service to veterans. And I am
12 particularly interested in providing service to California
13 veterans.

14 I have served 33 years in the Army in varied
15 assignments, and I feel that I can relate to veterans of all
16 ranks, veterans of all services, and veterans of most U.S.
17 conflicts.

18 I've been everything from a buck private to a colonel,
19 served Africa, Sicily and Italy. And I can relate to the Marines
20 with four landings, first wave.

21 I fly airplanes; I fly helicopters. I'm a Green Beret
22 type. I've had my duty all the way from commanding 6 people to
23 6,000 and doing work at all levels of administrative
24 responsibilities.

25 And with that, I stand open to questions, Senator.

26 CHAIRMAN ROBERTI: Very good.

27 Any discussion or debate? Any opposition?
28

1 SENATOR CRAVEN: I would move the confirmation of
2 Colonel Ugalde.

3 CHAIRMAN ROBERTI: Senator Craven moves Mr. Ugalde's
4 confirmation be recommended to the Floor.

5 Secretary will call the roll.

6 SECRETARY WEBB: Senator Doolittle.

7 SENATOR DOOLITTLE: Aye.

8 SECRETARY WEBB: Senator Mello.

9 SENATOR MELLO: Aye.

10 SECRETARY WEBB: Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB: Senator Roberti.

15 CHAIRMAN ROBERTI: Aye.

16 For the record, I think we should note that Mr. Ugalde
17 has received the Silver Star, the Legion of Merit, the Bronze
18 Star, the Purple Heart.

19 The list of honors that you have and the dedication to
20 the service of your country is incomparable, and we couldn't find
21 a finer or more deserving person to serve this very important
22 role.

23 MR. UGALDE: Thank you very much.

24 CHAIRMAN ROBERTI: The vote is five to nothing;
25 confirmation's recommended to the Floor.

26 (Thereupon this portion of the Senate
27 Rules Committee hearing was terminated
28 at approximately 2:50 P.M.)

CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

12th day of March, 1986.


EVELYN MIZAK
Shorthand Reporter

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27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

TALMADGE R. JONES, Chief Counsel
Department of Personnel Administration

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TALMADGE R. JONES, Chief Counsel
Department of Personnel Administration

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Certificate of Reporter

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointee appearing today, Talmadge R. Jones, Chief Counsel, Department of Personnel Administration.

Mr. Jones, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. JONES: Well, that's a question, Mr. Chairman, that I could probably knock out of the ballpark. Rather than tell you my life story, I'll try to be as brief as I can.

I graduated from Hastings College of the Law in 1967, and for the last 18 years have been an attorney for the State of California. Most of my legal career has been spent in the California Attorney General's Office in the Sacramento headquarters.

My emphasis during my 17½ years with the Attorney General's Office was principally in the area of public law and labor law in particular. During that time I served as the Attorney General's house counsel, or liaison, with the California State Personnel Board and handled many cases for that agency in the courts.

In 1972, you may recall that the provisions of Title VII of the Civil Rights Act became applicable to the states, and so I had the sensitive position of defending Title VII cases and resolving equal employment and affirmative action issues probably for an entire 10-year period during those critical years when a lot of cases were coming out of the Supreme Court.

1 I also handled one case before the United States Supreme
2 Court involving the Federal Minimum Wage Law. The Minimum Wage
3 Law was not the issue; it was the overtime provisions of that Act
4 which was very cumbersome in terms of not only costs but
5 practices of State personnel, and so I appeared before the United
6 States Supreme Court in that case, representing then Governor
7 Reagan, and succeeded in a 5-4 decision in overturning the Fair
8 Labor Standards Act. Regretfully, one year ago the Supreme
9 Court, by a similar margin of 5-4, turned that case back again,
10 and as soon as I took over this new job last April, I had to go
11 back to Washington, and this time rather than appear in the
12 Supreme Court, I appeared before Congress in an attempt to get
13 resolution of that issue both for State government and local
14 government.

15 Over my career I've also handled quite a number of cases
16 in the California Supreme Court, several of them following acts
17 of this Legislature in salary appropriations for State employees.
18 Some of those acts were over \$200 million, and I succeeded in
19 defending the State legislation successfully, and the State
20 employees were paid their salaries. That was not only
21 professionally rewarding, but socially rewarding because my
22 colleagues, all of whom were State employees, thought me a pretty
23 good fellow for that.

24 So, I've had, to be brief, I've had quite a bit of
25 exposure to labor law, public law, government law, administrative
26 law for my entire 18-year career with the State. I've been a
27 public servant since my graduation from law school. I have not
28

1 been in private practice. During my entire career I've been a
2 public lawyer and proud of my record.

3 CHAIRMAN ROBERTI: Very good to see you promoted within
4 the civil service ranks.

5 Any questions of Mr. Jones?

6 SENATOR CRAVEN: I would move Mr. Jones' confirmation to
7 the Floor, Mr. Chairman.

8 CHAIRMAN ROBERTI: Mr. Jones' confirmation has been
9 moved by Senator Craven.

10 Is there any discussion or debate? Is there any
11 opposition in the audience?

12 Hearing none, the Secretary will call the roll.

13 SECRETARY WEBB: Senator Doolittle.

14 SENATOR DOOLITTLE: Aye.

15 SECRETARY WEBB: Senator Mello.

16 SENATOR MELLO: Aye.

17 SECRETARY WEBB: Senator Petris. Senator Craven.

18 SENATOR CRAVEN: Aye.

19 SECRETARY WEBB: Senator Roberti.

20 CHAIRMAN ROBERTI: Aye.

21 The vote is four to nothing. Confirmation is
22 recommended to the Floor.

23 Congratulations and good luck.

24 MR. JONES: Thank you very much.

25 (Thereupon this portion of the Senate

26 Rules Committee hearing was terminated

27 at approximately 2:20 P.M.)

28 --oo0oo--

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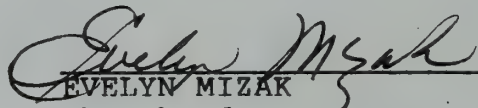
I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

15th day of January, 1986.


EVELYN MIZAK
Shorthand Reporter

